SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 4272

A BILL TO ENLARGE THE SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE

JULY 12, 1988

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SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE

TUESDAY, JULY 12, 1988

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:23 p.m., in room 1334, Longworth House Office Building, Hon. Gerry E. Studds (chairman of the subcommittee) presiding.

Present: Representatives Studds, Carper, Bosco, Miller, and Herger.

Staff present: Ed Welch, Tom Melius, Don Barry, Gina DeFerrari, Lisa Murray, Jeffrey Pike, Joyce Sacco, and Will Stelle.

STATEMENT OF HON. GERRY E. STUDDS, CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Mr. STUDDS. Today's hearing is on legislation to expand the San Francisco Bay National Wildlife Refuge. I want to welcome to our Subcommittee the author of the bill, our colleague from California, Mr. Edwards, and I trust our colleague, Mr. Stark, in a moment, both of whose districts would be affected by the legislation. I also want to welcome the witnesses from California, who have been sufficiently irrational to leave the Bay area and come to Washington at this time of year, or any other.

The San Francisco Bay National Wildlife Refuge is not unfamiliar to this Subcommittee. Sixteen years ago, with different faces here, we reported legislation that created this refuge, authored at that time by Mr. Edwards. More recently, in fact, only a few months ago the Subcommittee reported legislation to raise the authorization ceiling on this refuge so that land acquisition within its original boundaries could be completed. I am pleased to say that the Senate and the President both approved that initiative, and that it is now law.

The question now is whether and how we should expand that 1972 initiative even further. I note that two California members of our Subcommittee, Mr. Bosco and Mr. Konnyu are co-sponsors of the bill, and that lands in Congressman Konnyu's district are amongst the parcels proposed for addition to the refuge in this bill.

With that said, I would ask everybody to bear in mind that we have a lease on this room that expires at 3:00 p.m. And I will ask

people to just simply bear that in mind. What we're going to do by way of procedure, is to start with the distinguished members of Congress, and then proceed with the remainder of the witnesses in a single panel.

And we begin by welcoming our distinguished and venerable colleague, the Dean of the California Delegation, Mr. Edwards. Don, welcome.

STATEMENT OF HON. DON EDWARDS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. EDWARDS. Thank you very much, Mr. Chairman. I deeply appreciate your having this hearing today, and I'm joined by the entire Bay Delegation in the House of Representatives of nine members.

Let me begin, Mr. Chairman, by telling you what we now have in the San Francisco Bay National Wildlife Refuge. And, frankly, what we have is a marvelous success story.

It was authorized in 1972 at 23,000 acres, the Refuge recently encompasses some 18,000 acres. Today's spectacular urban wildlife refuge is a primary and vitally important link in the Pacific Flyway. Seventy percent of the total number of shorebirds using the Pacific Flyway, over a million birds, call the refuge their home each winter.

In addition, the refuge serves as a permanent home to the endangered California Clapper Rail and the Salt Marsh Harvest Mouse. Three threatened species, the California Least Tern, the Peregrine Falcon, and the California Brown Pelican also depend on the refuge.

The refuge offers a number of outstanding educational programs. These programs teach young people in the Bay area through a well-organized "hands-on" program and through a teacher training program that helps educators learn how to teach their students all about the refuge. We're really talking, Mr. Chairman, about thousands of children who come regularly to the refuge.

Outdoor enthusiasts also find the refuge an exciting place for fishing, birdwatching, camping, hunting, hiking, boating and photography. The dedicated staff of the refuge has worked closely with the California Transit Authority to construct quality trails, roads, and beautiful piers for the public to enjoy. The fishing is very good off the piers.

So, as you see, the refuge has become an integral part of life in the San Francisco Bay Area, both as a neighborhood park for over five million people and as a valuable wildlife habitat.

Now this bill, Mr. Chairman, will enable us to continue the process that's been going on for more than 16 years to expand the refuge. It would expand the boundaries of the refuge by 20,850 acres of additional lands, marshes, tidal flats, salt ponds, submerged lands and open waters in the San Francisco Bay Area, which the Fish and Wildlife Service has termed "the most important wetland areas in South San Francisco Bay" not currently a part of the refuge.

How would the land be acquired? Subject to available appropriations, the Fish and Wildlife Service would be authorized under the

bill to negotiate only with willing sellers. Throughout the past few years, many land owners of the threatened wetlands surrounding the wildlife refuge have expressed their willingness to sell these parcels to the United States Department of the Interior. Unfortunately, because the refuge has reached its acreage limit which was authorized in 1972, these important lands have not yet been authorized for purchase.

H.R. 4272 will do only one thing: give these property owners the option, which they do not now have, to donate or sell wetlands and wildlife habitat to the wildlife refuge. Because the bill requires that land be purchased only from willing sellers, only those local landowners who have expressed an interest in selling or donating their land to the refuge will be affected by the scope of the legislation.

In addition, we are fortunate to have millions of dollars available locally, through environmental foundations and State allocations, to acquire available wetlands and habitat in the South Bay once the lands are authorized. For example, the State of California recently passed Proposition 70, the Planning and Conservation League Bond Act, which allocated $8 million for the acquisition of wetlands in the South San Francisco Bay Area.

In addition, the National Audubon Society has contributed $55,000 toward the acquisition of wetlands for the refuge. The National Fish and Wildlife Foundation has agreed to match this amount by actively raising funds for the refuge from private organizations and individuals. The Foundation has also applied for grants to provide for additional funding to expand the refuge.

The bill you are considering today has broad community support. All the counties bordering the refuge, Alameda, Santa Clara, and San Mateo, have endorsed expansion of the refuge, as have a number of cities in the Bay Area. In addition, a broad range of local citizen groups, with active memberships of over 150,000, have been working in support of the bill.

H.R. 4272 would enable those of us who are dedicated to the preservation of the fragile ecosystem of the Bay to work toward our dream of an unspoiled Bay, safe from the ever-constant threat of destruction.

I thank you, Mr. Chairman, and I'm sure Mr. Stark, who's Ninth Congressional District also abuts on the Bay, and who, as always, has been of great assistance, and a wonderful environmentalist, has a statement. I'm not going to be able to stay very long, as you know, Mr. Chairman, because of the Nixon Impeachment Inquiry.

But you will hear from Mayor Dave Smith. He's a good friend of mine, and the mayor of the City of Newark, which I've represented for 26 years. Mayor Smith has represented the City of Newark for over 10 years, and has earned wide respect as a mayor and as a fine businessman in the area. You'll also hear from Mayor Gus Morrison of the great City of Fremont, California, which I've also represented for 26 years. He's been a close friend of mine for many years. He's been in Fremont City government for over 13 years, and has been a member of the Citizens Committee to Complete the Wildlife Refuge since its inception.

You're also going to hear from Mr. Paul Shepherd, Vice President of the Leslie Salt Company, that owns some of the crucial

lands there. Mr. Shepherd is representing the Leslie Salt Company which has worked very closely with us, all the way through in cooperation with the refuge staff. In fact, Leslie Salt Company leases salt ponds on the refuge, allowing industry and wildlife to peacefully exist. And you'll also hear from Rick Epstein. Rick is one of the driving forces behind the Committee. Rick's volunteer work and commitment has been instrumental to the improvement and preservation of the San Francisco Bay. And you also, I understand, are going to hear from the U.S. Fish and Wildlife Service. And they've always been very responsive to the environmental needs of the Bay Area, and they've worked hard to improve and protect our wildlife refuge.

Thank you very much, Mr. Chairman.

Mr. STUDDS. Thank you very much, Mr. Edwards. I'm sure this is a source of great pride to you.

The other gentleman from California, Mr. Stark. Your prepared statement will appear in the record immediately following your oral presentation.

STATEMENT OF HON. FORTNEY F. STARK, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. STARK. Thank you, Mr. Chairman.

And I'm just, as an original co-sponsor of Dean Edwards' bill, I'm happy to be here in support of it. I think it's important to note, and while I'm sure that Mr. Shepherd has some minor objections to the bill, and I hate to tell you that you should pay more attention to his testimony than mine, but we were classmates at MIT and he had far better grades than I did, so I have to stipulate that you will have a far more intelligent witness before you shortly.

I do think that the only——

Mr. STUDDS. I thought you said he got better grades?

Mr. STARK. He did indeed.

The only concern that comes up, and I'm not an attorney—Mr. Edwards is a preeminent attorney—but is this question of, I gather, how you cloud titles to private ownership. And I just think it's important to remember that as liberal a person as Lawrence Rockefeller—indicated that while he thought that the right to private property should remain inviolate, there was indeed one objection, and that was when the public interests were greater than the private interests in a piece of land. And I'm afraid that's something that this committee in its wisdom and deliberation is going to have to make that gentle distinction about when, in fact, does the conservatorship of land for the entire public, how much inconvenience, or how much can it invade the right to a private party to own land.

I wish you well in that. I think Congressman Edwards has brought a delicate balance to that. And his ability to negotiate with the real estate industry, and a whole host of areas that deal with the rights of individuals, I think is well known. And I hope the committee—I wish them well in their deliberation, and I appreciate your giving us this chance to testify in support of his legislation.

Thank you.

[The prepared statement of Mr. Stark follows:]

STATEMENT OF HON. PETE STARK, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman and Members of the Committee: As an original cosponsor of Congressman Edwards' legislation, H.R. 4272, I strongly urge your support for this bill. This legislation allows the protection of some of the few remaining wetland acres. In the San Francisco Bay Area, nothing is more threatened, yet so deserving of protection. The vast majority of wetlands are gone.

Once considered worthless swamp, the true importance of wetlands to the ecology has only been recently appreciated. The current San Francisco Bay National Wildlife Refuge provides recreational and learning opportunities to millions in the Bay Area.

Congressman Edwards' legislation authorizes the expansion of the original San Francisco Bay National Wildlife Refuge. Congressman Edwards' worked with the U.S. Fish and Wildlife Service to locate the areas that would enhance the Refuge. The Fish and Wildlife Service identified 20,850 acres that could be included.

One of the most important aspects of the legislation is the willing sellers clause. Currently, individuals who want to sell to the Refuge cannot because the expansion is not authorized. But there is no eminent domain clause, no taking provision. Private property rights are protected.

Mr. Chairman, the legislation will help expand protection for a unique national resource, the endangered wetlands of the San Francisco Bay. I urge your support for this important legislation which has the support of the entire Bay Area Congressional delegation.

Mr. STUDDS. We thank you.

Don, before you run, let me ask you the obvious question to the untutored mind here. I'm not a lawyer, and maybe that's why the question is obvious. In the absence of the provision which you have in the bill to restrict any acquisition of land to a case where you have a willing seller, you would have the standing authority, I would assume, of the Interior Department, to take land by eminent domain, is that not right? If we were to expand the boundaries without your provision requiring a willing seller, that would clearly cloud the title of any acreage within the newly drawn lines.

Mr. EDWARDS. That's correct, Mr. Chairman.

Mr. STUDDS. If you restrict it to an instance where you have a willing seller, how do you cloud the title of an unwilling seller?

Mr. EDWARDS. We're all good neighbors out there, and we just decided that we would restrict the sale as it has generally been in the purchase of the 18 or 19 thousand acres already that we rely on community spirit, and a fair market price.

If we didn't have the description pursuant to the map, then the Fish and Wildlife Service would have the rights of condemnation, which I believe we are taking away from them by limiting it to willing sellers.

Mr. STUDDS. I think you're really addressing what was going to be my next question. Let me just make sure that we get that one clear.

I assume that the judgment you have made in drafting the bill the way you did, was an overlay of political judgment on top of the conservation judgment, if you will, that went into the bill in the first place. This given all the complexities, it seems the best way to approach it, I think that's what I hear you saying.

But my first question was in the unlikely event that someone should suggest after you that adoption of the bill as you have drawn it, would cloud the title of some of the land in question, my question is how could be possibly cloud titles if, in fact, there must be a willing seller, if we remove the power of eminent domain?

Mr. EDWARDS. The witness, the Mayor and witnesses from the City of Newark will explain why they believe that the filing of the map attached to the bill will cloud the title. I happen to disagree with them, but I know, Mr. Chairman, that you will give their opinion a very respectful audience.

Mr. STUDDS. That, I trust, goes without saying. I thank you.

Are there other questions? The gentleman from California, Mr. Bosco.

Mr. Bosco. Thank you, Mr. Chairman.

And I'll be very brief. We have before us two of my very admired colleagues from California, and I want to join in everyone that appreciates the work you've done on this refuge.

I must ask, however, that we have an immediate amendment to this piece of legislation. I notice that it was put in on behalf of Mr. Edwards of California, for himself, Mrs. Bosco, Mr. Dellums and a number of others. Now——

Mr. STUDDS. This is premature, is it not?

Mr. Bosco. Well, actually in that I got married last Saturday [laughter] March 29, when this was introduced was certainly premature. And I did tell my wife that I think probably our marriage will be even better since she's going to remain in California and I in Washington, but to have her sponsoring legislation already, I think is a little presumptuous perhaps.

But with that amendment, I think I could be very supportive of the bill.

Mr. EDWARDS. Well, thank you, and Mr. Stark and I say congratulations and why weren't we invited to the wedding? [Laughter.]

Mr. Bosco. I didn't want any public witnesses. [Laughter.]

Mr. STUDDS. Are there any other questions or amendments?

[No response.]

Mr. STUDDS. If not, we thank you gentlemen very much. We'll see if we can't get right at this.

If we could ask the remaining five witnesses to come forward as a panel, we will hear you and then we'll proceed to question you together. Your prepared statements will appear in the record immediately following the oral presentations.

We're going to proceed, if you don't mind in the order in which you appear on the witness list. We'll start with Mr. William Hartwig, Chief of the Division of Realty of the U.S. Fish and Wildlife Service.

Mr. Hartwig.

STATEMENT OF WILLIAM F. HARTWIG, CHIEF, DIVISION OF REALTY, U.S. FISH AND WILDLIFE SERVICE

Mr. HARTWIG. Mr. Chairman, we have submitted a statement for the record, and I would like to summarize that statement at this time.

Mr. STUDDS. I appreciate that. And let me just—I forgot to say, I gather that each of you have either agreed to, or been brow beaten into conceding that you will limit your oral statements to no more than five minutes. All of your written statements will appear in their entirety in the record. Thank you.

Go ahead.

Mr. HARTWIG. Mr. Chairman, San Francisco Bay National Wildlife Refuge was established June 30, 1972, by Public Law 92-330. Over the past 16 years four additional pieces of legislation have been enacted, mainly affecting the authorized ceiling and timing for acquisition. The original legislation authorized acquisition of up to 23,000 acres, at a cost not to exceed $9 million. Later legislation increased the ceiling to $13.2 million and finally eliminated any restriction on the funds necessary to acquire lands within the refuge boundary.

The Service has currently acquired 18,220 acres, or approximately 80 percent of the authorized acreage, at a cost of $11.7 million. $1.5 million is available from the Fiscal Year 1987 appropriations. These funds will be used to purchase approximately 450 acres. This will leave approximately 3,500 to 4,000 acres to be acquired at a cost of $8.5 to $10 million. H.R. 4272 would expand the refuge from 23,000 acres to 43,850 acres at an estimated cost of $200 million. With the current rate of annual funding of $1 to $2 million a year for this project, it could take a significant amount of time to accomplish the purposes of H.R. 4272.

The Administration opposes H.R. 4272 because of its impact on the budget during these times requiring fiscal constraint.

Also of concern are the restrictions on the use of condemnation. Condemnation, although used by the Service in less than three percent of the cases in the past 10 years, is necessary to carry out a normal acquisition program. In the majority of these few cases where condemnation has been used, it has been used to establish the legal owner or settle a difference in value between a willing seller and the Federal Government. There have been very few instances where the Service has been forced to use condemnation for other purposes such as the protection of a specific habitat that was imminently threatened with permanent destruction. For these reasons we are opposed to any restrictions on the use of condemnation.

This concludes my brief summary, and I am prepared to answer any further questions you might have.

[The prepared statement of Mr. Hartwig can be found at end of hearing.]

Mr. STUDDS. Thank you, sir.

We'll go next to Hon. Gus Morrison, mayor of the city of Fremont, which I assume, as Mr. Edwards said, is indeed a great city. Welcome.

STATEMENT OF HON. GUS MORRISON, MAYOR, CITY OF FREMONT, CA

Mayor MORRISON. Thank you, Mr. Studds.

Mr. Chairman and members of the committee, thank you for allowing me to testify, both personally and on behalf of my city, in support of the expansion of the refuge.

Fremont is 32 years old, and in that time has grown from 25,000 people to 170,000. We continue in a period of rapid growth, both in residential, commercial, and industrial areas. And today, we are the fourth largest city in the Bay Area.

Despite this rapid growth, we take great pride in building a special city, one that provides a variety of lifestyles, interests and opportunities for our citizens. We are especially committed to preservation and enrichment of our environment and the quality of life of our past and to retain that. In 1964, we bonded ourselves to build one of the Nation's great parks to provide a part of that ambience. We have stressed the preservation of open space as we developed and, in 1981, by citizen initiative we have forever preserved the eastern foothills of our city.

It is in this context that we support H.R. 4272. We are proud to be the home of the refuge headquarters, its interpretative center, as well as many square miles of its territory. The refuge contributes to our quality of life in many ways; school programs for young people, recreational opportunities for people of all ages, duck hunting without a long drive, fishing without a license, birdwatching, or simply the escape from the troubles and demands of an urban environment for a respite. The refuge is there, not only for the wildlife, but for us.

But more, it's a model and a symbol. It's a model of what can be in other areas of our Nation and our world, proof that we can retain the beauty and tranquility of nature in an urban setting. The refuge proves it's possible, even necessary, to provide our people with a reminder of what once was and offer of hope what might be. People from all over the world come to Fremont to visit and wonder at the success of this refuge, an island of tranquility in an urban ocean.

But it is also a symbol, a symbol of what will never be again. From the time the white man discovered San Francisco Bay in 1769 until 1964, when protective legislation was enacted, one third of the original San Francisco Bay had been filled. Where once birds, fish, shellfish, and other wildlife flourished, man destroyed so man could build. The bay was filled, its waters polluted with sewage, dredge spoils, heavy metals, and other by-products of a careless, industrialized society. Because the South Bay had not developed as rapidly, we were able to retain and preserve what has become our refuge, a small symbol of the past.

The original refuge dealt with the realities of its time, and preserved the area possible and practical then. The founders, however, did not address the necessary areas surrounding the refuge, it's support system of wetlands and uplands. Since the bay was first mapped, more than 90 percent of the bay's wetlands have been destroyed. These fragile lands are amenable to developers for they're flat, easy to fill, and close to an urban infrastructure. One bulldozer destroys tens of acres of wetlands in a day.

Others can tell you, far more eloquently, of the value of these wetlands from an ecological standpoint. It is important for me to tell you that every significant wetland parcel in South San Francisco Bay has some sort of development proposal pending. These lands are under constant threat.

The city of Fremont believes the expansion of the Refuge will help alleviate this threat. We know this bill is not a regulatory bill. We know this bill would only allow the Fish and Wildlife Service to negotiate and purchase land from willing sellers. And we know this bill contains no appropriation for such purchase. It is also

clear to us that, as a result of this bill, no landowner will be unable to develop his land to its highest and best use. Land use determination remains a local government responsibility.

But even with these limitations, we believe a developer or landowner, once they understand the regulations which apply to them, may look for someone to purchase their land for some use. Under the Clean Water Act of 1975, there is no development value to wetlands. No permit has been issued by the Corps of Engineers in years. Purchase by the Service, at wetlands values, will serve a public benefit and provide the land owner opportunity to sell.

Fremont was the first city to support the expansion of the refuge. We remain ardent supporters of the concept and look forward to working with the Fish and Wildlife Service, landowners and private and public funding sources to make the completed refuge a reality.

We urge your favorable action on this important legislation. It simply permits the completion of the refuge, setting a goal. It is up to us, and those who follow us, to make that goal a reality. I remind you that the problem in this, as in most things, is not that we set our goals too high and miss them, but rather that we set them too low and hit them. I implore you to give us a lofty goal and watch us hit it. Thank you for the opportunity to represent the City of Fremont before you.

[The prepared statement of Mayor Morrison can be found at end of hearing.]

Mr. STUDDS. Thank you, sir.

We come next to the Mayor, of what I am compelled to assume is an equally great city, the City of Newark, the Honorable Dave Smith. Welcome.

STATEMENT OF HON. DAVE SMITH, MAYOR, CITY OF NEWARK, CA

Mayor SMITH. Thank you, Mr. Chairman.

I, too, appreciate the opportunity to be here. The City of Newark, California is indeed a beautiful city of 40,000 people on San Francisco Bay.

I've been mayor now for more than a decade, and during that period of time, never has a bill required my presence in Washington, D.C. In fact, I interrupted my vacation in Michigan's beautiful upper peninsula to be here. I was raised there, and being raised there gives me an appreciation for water, forests and wildlife and their preservation.

I applaud and support Congressman Don Edwards' efforts to expand the San Francisco Bay National Wildlife Refuge. The existing refuge is indeed an asset to our area, as my colleague, Mayor Morrison, has mentioned. We are all proud of it. And, in fact, I would love to have some of the refuge in the City of Newark. But I have some very deep concerns, and these concerns are outlined in my statement, for the record, of June 29th, which has become part of the record, including some maps and opinion from our City Attorney.

H.R. 4272 would add 20,850 acres to the refuge. Thirty-nine hundred acres, as best we can calculate, of that proposed expansion, or

19 percent of that proposed expansion, is in my city, the City of Newark. This expansion would incorporate 44 percent of Newark's total land area into the refuge, and have a potentially devastating effect on our future economic development—44 percent of my city would be encompassed within the refuge under this piece of legislation.

There is a map attached, and I've spent some time here trying to figure out who put the lines on the map. My concern is that the refuge presses too far, not just covering salt evaporator ponds or marshes, but areas that in my opinion are uplands, lands that since the 1960's have been planned for industrial usage by our city. Now, I met with Mr. Hartwig this morning, and I don't mean to put words in his mouth, but it is my understanding that he told me that they haven't studied the area. And Mr. Hartwig also indicated to me that they have not released any map. But yet, a map exists, Mr. Chairman. And it is a part of this bill. And this map was drawn without any review process whatsoever. The city government of the City of Newark did not make any input to this map, nor have the affected property owners within our city boundaries. So I implore you, please, do not act hastily on this particular piece of legislation, because it is my fear that once boundary lines are drawn, the property becomes holy ground, and we would be transgressing the official intent of the Congress to even consider any type of development within these particular boundaries.

Our City Attorney has provided a document to you, and he has indicated in it that one could be misled into taking the position that this act has little effect on the City of Newark, and its property owners by virtue of the enlargement of the San Francisco Bay National Wildlife Refuge. The City of Newark is presently redoing its master plan. By this act, Congress would be telling the City of Newark that its planned industrial land is within the San Francisco Bay National Wildlife Refuge, and is no longer industrial. In short, Congress is now planning the City of Newark.

It is argued that the acquisitions are not fixed, as lands may only be acquired from a willing seller, as stated in Section 2(b), line 20. What this really means to us is that Newark's revenue will be vitally affected; that these lands will be subject to a cloud and may not be developed pursuant to the city's existing plan, and must be considered in the city's new master plan presently being studied for adoption. In other words, we would like the opportunity to plan our own destiny.

Additionally, what this causes is the diminution of the values of the property, in that the only buyer would then be the Federal Government. This means that there would be one buyer and a closed market for 44 percent of my city. By the adoption of this legislation the Congress of the United States of America is telling the City of Newark it cannot allow development of lands which have been master planned for years as industrial. Adoption of this legislation will deprive the City of Newark of badly needed revenue. Should the city plan, consistent with this proposed legislation, our attorney believes that we may become unwilling parties to endless litigation.

I know that other cities share these concerns. I know that the Vice Mayor of Mayor Morrison's city, the City of Fremont, has not

seen the map. And I know that other mayors share these concerns, because the map is a relatively bit of new news to us.

So I would encourage the committee to respectfully take time out, and to consider several alternatives here other than what is presented. One would be authorizing the expansion of the refuge without the map, without boundaries, simply talking about acreage. A second would be to redraw the boundaries by negotiation and discussion with the affected property owners and the cities involved. Or, thirdly, to go through a full environmental impact process.

Our future is in your hands, Mr. Chairman, and I implore you to act wisely. Thank you.

[The prepared statement of Mayor Smith can be found at end of hearing.]

Mr. STUDDS. Thank you, sir.

We'll hear next from Mr. Paul Shepherd, representing the Leslie Salt Company.

Mr. Shepherd.

STATEMENT OF PAUL SHEPHERD, VICE PRESIDENT AND LAND MANAGER, LESLIE SALT COMPANY

Mr. SHEPHERD. Mr. Chairman, this is a brief summary of the testimony I've already submitted.

I am Paul Shepherd, vice president of Leslie Salt Company. Our company strongly supports responsible expansion of the San Francisco Bay National Wildlife Refuge. But, for the reasons that I will outline for you, we must just as strongly oppose the approach used by the bill, H.R. 4272, which is the subject of this hearing.

Leslie Salt Company is a subsidiary of Cargill, Incorporated. Leslie has been farming salt from San Francisco Bay water for more than half a century, and is the only surviving salt company in our area. We harvest more than one million tons of salt each year from our three San Francisco Bay locations. We employ 350 workers in the area and add 150 more during the four months of our harvest season.

We produce our salt by concentrating sea water that we draw in from the bay. It is an entirely benign use of the bay that is harmonious with its environment. In fact, salt production is recognized in California State law as a beneficial use of the bay.

We indeed appreciate the intention of the drafters of the legislation to promote the expansion of the wildlife refuge. Our company is committed to the protection of the bay and its wildlife, and as I have indicated, we fully support the goal of expanding the refuge. However, we do not believe that H.R. 4272, as currently drafted, is the proper or fair way to go about achieving this desirable goal.

Mr. Chairman, our specific problem with this bill is the incorporation of the map prepared by the U.S. Fish and Wildlife Service. As the boundaries are proposed, Leslie Salt Company has a major stake in this legislation.

Leslie Salt owns well over 17,000 acres of the 20,850 acres that are the subject of the map. That comes to approximately 85 percent of the land authorized for acquisition under this bill. Moreover, the line drawn on the map takes in almost all of our developable lands.

Yet, at no time during the drafting of this map were we consulted. Nor did the map makers consult with other landowners in the area, local governments, or the State highway department or others with legitimate private or public interest in the land that is the subject of this bill.

The map was prepared by a single-purpose Federal agency, outside the procedures set forth in NEPA, the National Environmental Protection Act. It has been represented as a conceptual map only, but that is not the case. Specific parcels are included or excluded. The map's boundaries are anything but general or conceptual in nature.

The targeting of so much of our land holdings for the expansion proposed by this legislation threatens our company with real economic harm. Regardless of the good intentions behind this bill, the practical effect of the inclusion of the map in H.R. 4272 has been to cast a cloud over the land parcels that are located within its boundaries. The mere existence of the map in an unreported bill already has reduced the value of these lands.

Since the map's creation we have learned of requests for downzoning of land that we own more than two miles from the bay. In one instance, an effort by the City of Newark to rezone a parcel of land as part of its mandatory general plan review has been challenged by an opponent who has raised the map as evidence of the Federal Government's plans for the tract.

This has just been the impact we have felt from a proposed bill, not an enacted law. The incorporation of the map, in other words, is tantamount to a Federal lien on the properties included within its boundaries.

Leslie Salt supports the refuge in San Francisco Bay. The wetlands and other areas protected by the refuge help protect the environmental quality of the bay. This is important to us, both as residents of the area, and as commercial users of the bay waters. No one has a greater stake in a healthy bay than Leslie Salt.

Mr. Chairman, we do believe there is a way to move forward together to achieve the same goals sought by this bill. We are confident there is a satisfactory way to protect the fragile natural environment of San Francisco Bay, a resource Leslie Salt Company has shared stewardship of for over half a century. We would welcome the opportunity to work with you and your staff to try to resolve our difficulty with the approach now contained in H.R. 4272.

For example, one approach that we have raised would be to move the bill without incorporation of the map. It would then be an open-ended authorization for the acquisition of the additional acreage for the San Francisco Bay National Wildlife Refuge. Such an approach would both signal the Government's intent that expanding the refuge deserves a higher priority and remove the stigma that the current version of the bill now imposes on private land holdings in the area.

We encourage the Federal Government to negotiate fairly with property owners for any parcels in which the Government may be interested. However, we do not believe it is fundamentally fair for the Government to attempt to stack the deck in its favor by intimidating other potential buyers with legislated maps. This is the

practical effect of the map and completely contradicts the legislation's concept of a willing seller.

Thank you for this opportunity to present our concerns.

[The prepared statement of Mr. Shepherd can be found at end of hearing.]

Mr. STUDDS. Thank you, sir.

Finally, we hear Mr. Epstein, of the Citizens Committee to Complete the Refuge. Mr. Epstein.

STATEMENT OF RICHARD EPSTEIN, CITIZENS' COMMITTEE TO COMPLETE THE REFUGE

Mr. EPSTEIN. Mr. Chairman and members of the committee, my name is Richard Epstein. I am co-chair of the Citizens' Committee to Complete the San Francisco Bay National Wildlife Refuge, a grassroots organization. Thank you for allowing me to testify on behalf of Bay Area citizens who support the completion of the refuge through passage of H.R. 4272.

H.R. 4272 is a testament to the vision of Congressman Edwards and the eight other Representatives who have joined him to cosponsor this bill, a vision of a healthy bay ecosystem thriving with wildlife and plants, a place where people will want to work and play far into the future. It is a vision shared by the more than 150,000 people I represent, all of them members of public interest organizations that endorse the efforts of the Citizens' Committee, as well as thousands of other citizens in the San Francisco Bay Area who share our concern for our endangered wetlands.

As the result of an expanded awareness of the need to preserve wetlands in an urban area, the original Citizens' Committee was formed in 1968. With the leadership of Congressman Edwards, the Citizens' Committee helped to create the San Francisco Bay National Wildlife Refuge. Today our refuge is one of the shining stars among a network of Federal refuges administered by the Fish and Wildlife Service. The refuge attracts nearly 200,000 human visitors each year and hosts millions of shorebirds and waterfowl migrating along the Pacific Flyway.

In the early 1980's research by refuge and State biologists led to the discovery that seasonal wetlands were of great value to migratory birds and other species. The lands, dry in summer and wet in winter, provide critically important nesting, resting, and feeding habitat. But with this discovery came the shocking realization that virtually no seasonal wetlands or critical upland buffer areas were included within the originally authorized boundaries of the refuge. Instead the presently authorized refuge is composed largely of open water, salt ponds and salt marshes.

In 1986 a new Citizens' Committee adopted a new goal, to see that the necessary seasonal wetlands were added to the refuge. These additions would complete the refuge in an ecological sense by providing the range of habitat necessary to sustain wildlife including at least three endangered species.

The response of the citizens of the Bay Area to this goal has been nothing short of overwhelming, and our ranks have grown quickly. We have nurtured the formation of local groups and today, we can count among our supporters a total of 56 grassroots citizen organi-

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zations, ranging from the League of Women Voters to the California Waterfowl Association, to the California Planning and Conservation League, as well as cities, counties and open space districts around the South San Francisco Bay. We have also enjoyed overwhelmingly positive press support.

Among our most significant contributions has been our effort to support future refuge acquisitions with State and private funds. We played an important role in the passage of California's first initiative environmental bond act, which will provide $8 million for wetland acquisition in South San Francisco Bay. We've enlisted the support of the National Fish and Wildlife Foundation, which has agreed to raise private funds for acquisition. Indeed, a local chapter of the Audubon Society has already contributed $55,000 for land acquisition. A primary responsibility of our staff is to solicit private donations, a responsibility we will continue to shoulder even after this bill becomes law.

We are not unaware, however, of the concerns of the development community and other landowners who hold title to wetland areas. In recent years, the prohibitions against filling wetlands have increased. State agencies, mirroring the concerns of Californians over the disappearance of wetlands, have adopted more stringent policies to protect wetlands.

In fact, over the past two years, not a single permit to fill a seasonal wetland of significant size has been issued in the South San Francisco Bay by the U.S. Army Corps of Engineers, which, along with the U.S. Environment Protection Agency, regulates the dredging and filling of wetlands.

This bill will broaden the options available to wetland owners. They will now be able to choose to sell their wetlands for inclusion in the refuge at fair market value, rather than engage in the permit process required by Section 404 of the Clean Water Act to build on wetlands. The bill will help foster arms length negotiations for such sales without the threat of eminent domain. And as always, landowners will retain their option to pursue the development of their lands.

We find this legislation to be balanced and favorable to a variety of interests. It satisfies the desire of citizens to preserve wetlands for the generations to come, and to participate in raising funds for that purpose; it protects seasonal wetlands for use by our native plants, animals, birds and people; and it provides a new choice to local landowners without the threat of eminent domain.

We hope that you will share our vision and look favorably upon this important piece of legislation.

Thank you.

Mr. STUDDS. Thank you very much.

Let me ask a couple of questions for the record, and then a couple that occurred to me just as we listened to you.

Mr. Hartwig, first of all, Assistant Secretary Horn, as you know, sent a letter to Mr. Edwards, Congressman Edwards, on March 3rd of this year, with a map, indicating that the Fish and Wildlife Service had identified 20,850 acres as "the most important wetland areas in South San Francisco Bay outside the existing refuge boundary." Are, by any chance, the 20,850 acres identified by Sec-

retary Horn the same 20,850 acres proposed for addition to the refuge by Congressman Edwards' bill?

Mr. HARTWIG. Mr. Chairman, as far as I'm aware, they are the same.

Mr. STUDDS. OK.

And for you, sir, or Mr. Epstein, or both perhaps, how would you rate the importance of the upland sites which have been identified as the most expensive additions to the existing refuge in terms of their contribution to the purposes of the refuge?

Mr. HARTWIG. Well, I would generally say that the upland sites are necessary. I would say that the marsh area was more important and would be of a higher priority for us, but certainly we would need to have some representation if such a refuge expansion were to occur. We would need to have such a representation of both types of habitats.

Mr. STUDDS. Before I go to Mr. Epstein, who may want to respond to this, can you give us—is it fair to ask you roughly, very roughly, what percentage of the potentially expanded acreage could be characterized as upland?

Mr. HARTWIG. About six percent.

Mr. STUDDS. About six?

Mr. HARTWIG. It's very small in size, acreage-wise.

Mr. STUDDS. Mr. Epstein, did you want to respond to that question?

Mr. EPSTEIN. Yes, I would.

If you look at the area involved, you're talking about fairly heavy concentrations of people that would abut right up against habitat areas, and having those buffers will serve to protect the wildlife on those areas from the intrusions of people. We're talking about a very heavily traffic area that surrounds the refuge boundaries, now and in the future.

Mr. STUDDS. And again, for the record, I guess, Mr. Hartwig, are the wetlands proposed for addition to the refuge in the bill habitat for any endangered or threatened species?

Mr. HARTWIG. Yes, sir, they are.

Mr. STUDDS. Can you name them?

Mr. HARTWIG. The exact lands? It's the same——

Mr. STUDDS. No, no, no, the species.

Mr. HARTWIG. It's the same species that were talked about originally. Basically we have the Salt Marsh Harvest Mouse, the California Clapper Rail, the American Peregrine Falcon, the California Least Tern, and the California Brown Pelican.

Mr. STUDDS. OK.

And finally, in your judgment, how important are the proposed additions to the refuge for waterfowl in the Pacific Flyway?

Mr. HARTWIG. I would say that the areas are very important for the migrating waterfowl. It was mentioned that we have upwards of a million birds moving through that area. Essentially 70 percent of all the migratory birds moving on the Pacific Flyway, in fact, stop at one point in time, either in their northward or southward move.

Mr. STUDDS. Mr. Shepherd, have you sold lands to the existing refuge, has the company sold them?

Mr. SHEPHERD. Yes, sir. In fact, I think 12,000 acres of the existing refuge were purchased from Leslie Salt Company.

Mr. STUDDS. Do you still harvest salt from lands you've sold to the refuge under an agreement with Fish and Wildlife?

Mr. SHEPHERD. Part of our operations, and it's an important distinction to make, are included within the existing refuge. Those are the concentrating ponds. That's one part of our operation. This proposed map includes the entire other parts of our operation, which would not be conducive to habitat value in cooperation with the refuge.

For instance, our crystallizing beds, and bittern ponds, which are quite inhospitable to wildlife.

Mr. STUDDS. Let me ask you—actually at some point I just might ask you who have different perspectives, if you'd like to have a brief discussion with one another, that's always an enlightening way to proceed.

Mr. SHEPHERD. I'd just add that we do enjoy a very good working relationship with the refuge personnel.

Mr. STUDDS. I understand that.

Just in no particular sequence, now that we've disposed of the ones that I was asked to put on the record, I'm a little unclear, both Mayor Smith and you, Mr. Shepherd suggested that one possible alternative that from your perspective might be preferable, would be simply to have, I guess, an open-ended authorization for X numbers of increased acreage for the refuge, without a map and without specifying what acreage we might have in mind. It seems to me, if anything, that would cloud more titles, if in fact this process clouds titles at all, which I think is debateable. But if it does, simply putting the area on notice the Federal Government might be interested in taking any or all unspecified areas, it seems to me, would give you even more problems from your perspective, would it not?

Mayor SMITH. You know, any lands that now exist, of course, that come under Corps of Engineers or Fish and Wildlife jurisdiction would still have to go through those particular review processes, and I just offer that as an alternate to consider.

I certainly don't like where the boundaries are currently drawn.

Mr. STUDDS. Mr. Shepherd did you want to respond to that?

Mr. SHEPHERD. Yes, sir.

It isn't a question, necessarily, of clouding title. It's a question of clouding use. With this plan in place the local jurisdiction has no other use to allow but the use shown on this map. And that gets to the question of value. It's like the United States Congress coming in and saying to us, you can only use this land for refuge purposes; now, we're willing to buy it for fair market value. Well, you have reduced the value, there are no other users that we can sell it to. We can't even go to the local city and ask them to zone it for a higher value.

We do not object to including our lands in the refuge. We object to you coming in, or the Congress coming in, the Federal Government coming in and devaluing it, and then coming and saying we'll buy it. You're the only game in town. That's what we consider unfair. That's the cloud we're talking about.

Mr. STUDDS. I take it your concern is not simply your ability to continue to use the lands as you are currently using them, but the possibility of selling them for other development purposes, is that correct?

Mr. SHEPHERD. Congressman, our main concerns, and what I think the City of Newark is concerned about, are certain lands which are now surplus to our operations, that are included within this area of the map.

Mr. STUDDS. Do they come under the category of uplands?

Mr. SHEPHERD. Yes, sir, in our judgment. Now other people here might disagree with me. But in our judgment they are.

Mr. STUDDS. Are the ones about which both Mayor Smith and you are principally concerned within that roughly six percent which could be characterized as uplands?

Mr. SHEPHERD. Yes, sir, in our judgment.

Mr. STUDDS. So some 94 percent of what we're talking about is without controversy?

Mayor SMITH. I don't know. I haven't looked at in respect to the percentage that Mr. Hartwig had mentioned.

Mr. STUDDS. Right.

Mr. HARTWIG. Mr. Chairman?

Mr. STUDDS. Yes.

Mr. HARTWIG. Let me address the point on clouded title, which as it was cleared up is not really clouded title. We're talking about a perceived restriction or reduction in the value of a property when an area is made a Federal area. We have run across the entire opposite affect in other refuges.

We have refuges where much of the land is in fact continued to be developed, and as long as we have a base within the overall refuge area to carry on our mission, we can work cohesively with such a situation. Land is currently bought and sold on a daily basis within refuges. The price, if anything, in many areas goes up, not down, because it's a Federal area. Knowing that ultimately there would be a buyer is very desirable to most people in real estate. So I would beg to differ on that point.

I would also like to indicate that the current record is very well known, specifically in San Francisco Bay, as far as value of property; that value is increasing. I think we can look at the record and see that the value has gone up each year, not down. I think that trend in the San Francisco area is here to stay for a few years more.

Mr. SHEPHERD. We look forward to written copies of your testimony, because when Georgia comes in to negotiate with us on the parcel, we'll be glad to use that information with her.

Mayor MORRISON. Mr. Chairman?

Mr. STUDDS. Mr. Morrison.

Mayor MORRISON. One of the powers that we have left after the Congress decides which powers it wants and the State decides what powers it wants, one of the few that we get left at local government, is that of land use designation and control of land use in our city. And we hold that very inviolate, that no one tells us how we can use the land in our city. And this bill does not do that either. It continues to allow us to make decisions and to decide if someone wants to develop a piece of property, and we agree with them, then

they can go fight with the Corps of Engineers over whether it's wetlands or not. It's not an issue that we have to decide.

So I think this bill doesn't change any of that, and if it did, I think I would probably oppose it. But I see no invasion in our right to control our destiny.

I would also point out that in 1972, Leslie Salt argued against the implementation, here in Washington, of the original wildlife refuge bill, and then they have sold 12,000 acres of crystallizing ponds, which are just—if you fly into San Francisco Bay, and you look down as you're landing, you see that water that's red, that's their ponds, and that's the only thing that land has any use for is crystallizing salt out of the water. And they managed to sell those to the Fish and Wildlife Service and continue to reap the salt from those lands. So that's the best of both worlds.

Mr. STUDDS. A New Englander can't resist asking this question of the two mayors. I was trying to make some sense out of these maps here. If I read them correctly, something which I had previously attributed to the political atmosphere in Southern California has also attacked Northern California. Is it the case that the City of Newark is entirely surrounded by the City of Fremont?

Mayor MORRISON. They have no access to the sea, like Uruguay, yes. [Laughter.]

Mr. STUDDS. Well, I had thought that was an absolutely inexplicable phenomenon confined to Los Angeles County, but it clearly was not.

Mayor MORRISON. It was Newark's choice. They could have incorporated when the five towns that became Fremont incorporated, but Newark chose to go alone. And somebody with some wisdom decided that the Bay should be in Fremont, long before Dave or I were around.

Mayor SMITH. I was rather young when that happened, Mr. Chairman. [Laughter.]

Mr. STUDDS. This explains the upper peninsula of Michigan, I guess.

Mayor SMITH. That's where I was, sir, yes.

The thing that concerns me—for example when you come over the Dumbarton Bridge, you know, which is at the lower end of San Francisco Bay, and you come through Fremont, of course, to get into Newark, at the very first freeway interchange we have a piece of land there, which I believe is owned by Mr. Shepherd's company, and that is one of those parcels that we have, you know, for a long time thought about as developing industrially. And for some reason I just can't see that proceeding as an industrial development if it winds up within the boundaries of the refuge expansion.

It just doesn't seem like that possibility exists any more, and I think that that opportunity is taken away from us, and we're talking here about compensations of property owners, I also have to be concerned about the City of Newark, and our tax base, and the tax revenues that are raised.

I'm sure Mayor Morrison could care less if industrial development is curtailed in the City of Newark. That would be fine with him, because he has a very large bank of industrial property left.

Mr. STUDDS. He looks like a very caring man. I find that difficult to believe.

Mayor SMITH. He is. He's a nice guy.

But, we don't—and that's why I have to fight so fiercely to preserve what lands we have left, where we can develop industrially so that we can continue to use the revenues from that property to enhance the quality of life in our city.

Mr. STUDDS. I'm certainly not one to tell you, as a mayor of a city, although I happen to have a home in a town which is two-thirds owned by the Federal Government, as a National Seashore. Worse things can happen to communities than to be protected forever, and not to require services.

That got the attention of the other gentleman from California. Mr. Bosco, you're recognized.

Mr. BOSCO. Thank you, Mr. Chairman. I'd like to explore some of the concerns expressed by Mayor Smith, and also ask from what I understand 44 percent of your landbase is within this proposed expansion, is that true?

Mayor SMITH. Yes, sir, as best we can calculate. That's correct.

Mr. BOSCO. And then, Mr. Shepherd, you said that no one had ever worked with you on drawing these boundaries, or maps, even though 85 percent of it is owned by Leslie Salt Company.

Where is this map? The legislation incorporates the map by reference. Do we have an exact map of what's intended for the authorization? Is it public knowledge? Has it been made available to the public, to the cities?

Mr. STUDDS. That's a very strange answer to a very readily anticipatable question. I gather our copy of the map has been recaptured by the Fish and Wildlife Service, and is currently in their possession. There's nothing secret about it.

Mr. Hartwig, can you account for it?

Mr. HARTWIG. Mr. Chairman, maybe I can enlighten the members of the committee. Basically, let me talk to the mystery of the map.

The map was drawn at the request of Congressman Edwards by staff who had made a very quick trip down to the area, talked with the manager at the refuge and his staff, made some initial judgment calls, and of course, everyone knows as soon as you put a line on a piece of paper that has other lines that represent peoples' ownership, it becomes very, very interesting to each person who is on one side of the line or the other. Our intention at the time was to respond to Congressman Edwards and provide him with our best opinion of where, if we were to expand the refuge, it would go.

We provided the Congressman this very rough map, which I believe we have with us today if you would like to see it. It's kind of rag-tag because it has been rung through some very tight hands as far as worrying about which side of the line people are on. That map, as it was transmitted, was to represent what we thought, at the time, based on an initial look-see of what should be in an area if it were to be expanded.

Normally, this type of map would be the end result of about a one-year-long process where the owners—all 65 owners in this case, including Leslie Salt Company—the affected towns, counties, State government, and any interested parties would have a chance to comment on the proposal's acceptability; whether this is the right place to put the lines or not. This process, as most of you are famil-

iar with, is the process set out by NEPA, the National Environmental Policy Act, which calls for an environmental assessment, which in turn provides for public meetings and public involvement, and study by the U.S. Fish and Wildlife Service, and remarks by the community and affected landowners. This process, as I mentioned earlier, would take about a year and would be very thorough. This is normally the process that we go through in establishing any new refuge or a major expansion to an existing refuge.

Mr. Bosco. Well, I can't imagine any process that we would sanction as being this abbreviated where the person, or the party that owns 85 percent of the land not being consulted on the development of lines on a map. I mean, this isn't the military situation where we need an emergency base or something like that. Presumably this—what would be the purpose behind not going through the normal guidelines as are presently set out in the law? Is there some threat immediately to this?

Mr. HARTWIG. I'm not aware of anything along those lines. I know it's an area of great concern to many people, and I think what we need to see here is some action in some direction. But I'm not aware of anything that requires us to take action today.

Mr. Bosco. Well, Mr. Hartwig, let me also ask you about this part of the bill that says that no acquisition will be made except by willing sellers.

Mayor Smith said that Newark apparently has some area set aside for potential industrial property. Are you telling us that if this legislation were to pass, that Newark could go right ahead and develop that area for industrial property, given that those people were not willing to sell to the Federal Government?

Mr. HARTWIG. What I'm saying is that this is not a simple question, even though it sounds like it is. Let's assume the legislation passes today, that the lines are drawn as haphazardly as they have been to this point in time, and in fact, we do have a development that's willing to proceed, as was mentioned earlier. There are several procedures that the city would, in fact, have to go through as far as 404 permitting process, et cetera. We, as a Federal Government agency, cannot proceed with purchase of any property without appropriated dollars to meet that particular value.

Mr. Bosco. No, I understand that part of it. I'm just saying that in truth, if we were all to be very honest here, the designation of that property as a wildlife preserve would eliminate its ability to be used for an industrial base, isn't that true?

Mr. HARTWIG. I'm not sure that it would. In fact, I would surmise that it in fact has happened, just as you have described, in other areas where someone, in fact, is within a refuge and has continued to do something contrary to what we felt was necessary. Obviously, we would agree that we would prefer not to have that develop. But we would not be able to stop such a development unless funds were available, and in fact, we had had the opportunity, which we have not heretofore had, to contact the city to see if some arrangements could be made where any impacts could be lessened.

So there are ways to live with both.

Mr. Bosco. So it would be perfectly clear, for the record then, that in effect any property owner within these boundaries of whatever map we eventually settle on, does not lose the value of his or

her property by virtue of this legislation, that they would have to truly be a willing seller in the sense that they could sell either to the Federal Government or to anyone else for the highest use of that land as the city would designate it given other Federal, and local, and State laws?

Mr. HARTWIG. You're absolutely correct. Local zoning has a great deal to do with the highest and best use that could be anticipated for a property. A private property owner would have the right to develop that property. As a result of the way the legislation is worded this time, we're not supplanting that right.

Our legislation normally does not include stipulations on condemnation, which I addressed earlier in my brief summary. Normally even without the willing seller clause that's in this legislation, you still would not be impacting the local owner as far as his or her ownership.

Mr. BOSCO. Thank you very much.

Mr. Chairman, I'm wondering if maybe we—and I support expansion of the refuge, and I'm a co-sponsor of the bill, but I wonder if in the attempt to be hasty about this, we might be thwarting our purpose. Maybe we would be better off going through the normal procedure of delineating where this actually should be and for what reason. And then eliminating the curtailment of the condemnation right, which could end up getting everybody into a real thicket that we wouldn't be able to get out of.

It seems to me either we find a Government purpose in establishing a map and setting aside an area, and then not curtail the condemnation right at all, or we do much as Mr. Shepherd has suggested and not set any boundaries and just authorize the general expansion of this. But it seems we're in a nowhere land in the middle here where the designation legally and otherwise of this property is kind of up in the air.

Thank you.

Mr. STUDDS. Mr. Hartwig, is there any precedent for this approach to the addition or creation of a wildlife refuge?

Mr. HARTWIG. As far as the current bill?

Mr. STUDDS. Yes.

Mr. HARTWIG. Mr. Chairman, there is no precedent to this date with the limitation on condemnation.

Mr. STUDDS. That's with the so-called willing seller provision?

Mr. HARTWIG. That's right. There is none that I'm aware of. There have been several attempts at one time or another, but basically we do not have anything that I'm aware of where the use of condemnation is prohibited.

As I addressed in my brief summary, and particularly in this individual area, we have not used condemnation at San Francisco Bay in the last 16 years. I do not have any inkling that we'd be using it in the next 16 or 20 years.

Mr. STUDDS. Even absent this waiver?

Mr. HARTWIG. Even absent this waiver. Our normal procedure is to work with individual landowners as they are willing to sell, and as funding comes toward us, and proceed with acquisition in that manner. We have not had a problem to date, and we've been quite successful in acquiring 80 percent of the initial area. I would not

understand any reason that would cause us to differ from that in any direction.

Mr. STUDDS. That's curious. Are you simply a gentler agency, for example, than the National Park Service?

Mr. HARTWIG. As you're familiar with, Mr. Chairman, living within a National Park Service area, our missions are somewhat different. We tend to draw lines out there where we basically would like to target as many of those acres as we can to provide sufficient habitat for certain types of flora and fauna to continue to survive. We can do that at a slower pace, and we can do that generally with a great deal of cooperation.

The National Park Service, our sister agency, has a different mission where quite often their line is drawn and they, in fact, have the mission of acquiring everything within that line to protect a scene or a historic event. So our missions are different to some degree. We will get into the condemnation situation in those very few times when we're preserving something like the very last habitat or area for a species to survive on this continent. If it's about to be destroyed we will wholeheartedly move forward if there is no agreement to sell.

This type of situation in San Francisco Bay does not lend itself to that. We already have a great deal of use by migratory birds and other such animals and birds, and wildlife, and it's anticipated as long as we can move forward in a cooperative manner, that shall continue. I don't see the "up against the wall, this is the last piece" syndrome, when we have 20,000 potential additional acres to deal with.

Mr. STUDDS. Did I understand you to say that in the creation of the existing acreage, within the refuge, that you did not have occasion to use eminent domain or condemnation?

Mr. HARTWIG. That's my understanding. I'm not aware of any.

Mr. STUDDS. Well, then the gentleman, Mr. Bosco, suggested, if I heard him correctly, that one possibility was that we not put this waiver in here and that we draw this or some other line, designate where we think the wildlife refuge should be looking to as a goal, and proceed in what you referred to as the normal course, by which I assume you meant absent this waiver with respect to a willing seller.

Mr. BOSCO. Well, if the Chairman will yield, I would just envision following the law that we've set out, which specifies that we go through a public hearing process where the cities presumably would be able to have input, the landowner would be able to express his concern, and then we set the lines just as we always do, without any——

Mr. STUDDS. Which law is the gentleman referring to?

Mr. BOSCO. Well, I think the NEPA, doesn't that set out a process for——

Mr. STUDDS. Not for the creation of——

Mr. BOSCO [continuing]. That Fish and Wildlife would go through in determining what lands it would want for such a thing.

Mr. HARTWIG. Mr. Chairman, what we're referring to here, I think in the discussion we have going back and forth, is not only NEPA, which provides broad guidelines on the type of procedures we should follow within a Federal agency, but we're also talking

about the basic 1972 Act establishing the current refuge, which does not have a prohibition on the condemnation feature, or in essence limiting us to willing sellers.

Mr. EPSTEIN. Mr. Chairman, could I comment?

Mr. STUDDS. Mr. Epstein.

Mr. EPSTEIN. The impression that's been given—there's two impressions that I would want to at least address. One is that there's been almost no discussion about the lands involved, and this is somehow a surprise. There have been discussions, certainly with Leslie Salt Company concerning lands that were considered important wildlife habitat. In fact, there have been discussions about even the possible purchase of it. Leslie, itself, has published a very lovely brochure showing the lands that they consider available for sale.

So it's hard to perceive the sense that this is a complete surprise. And even the City of Newark is aware of those areas that are at question, and that certainly from a citizen's viewpoint that we think would be valuable additions to the refuge. So it's not a complete surprise as to the types of lands that we're talking about.

And also, I think the development community and the cities have been portrayed here as somewhat shy. If you're at all familiar with the development community in the South Bay, that is not the case. I'm saying this from a citizen's viewpoint, looking forward to acquisition on these lands. We do not doubt that there will be a robust effort by both Leslie and the cities to develop these lands, as well as the other developers. We are content to live with that because we know that this bill does not change the basic regulatory process. The largest hoop they have to jump through is not this line being drawn, but rather Section 404 and other applicable laws.

We're not opposing giving up the right of eminent domain, because we were concerned that this be fair to the developers. We want to be fair, and we're prepared to deal with the regulatory process as the ultimate determinate of what lands will be developed, and what lands will go into the refuge.

Mr. STUDDS. Mr. Bosco, did you have any further questions?

Mr. BOSCO. Thank you, Mr. Chairman.

I think that raises an interesting point, because just less than a month ago I visited areas in my own district, which is a distance from where we're talking about, where the carpet of this room is dryer than the land that the Army Corps of Engineers there said was wetland. We're talking about the middle of fields that farmers plow every single season, and now the Corps of Engineers is saying that that land is wetland under Section 404. There is no major body anywhere near—a body of water anywhere near these wetlands that we've now discovered inside the boundaries of Santa Rosa, which is one of the cities in my area.

So I have a healthy respect for the difficulties that Leslie Salt, or anyone, would have to go through in developing this property, or the City of Newark. But I think, from our consideration on this committee, and again, I support the expansion of this wildlife refuge, is that I don't see any reason why we wouldn't go through a process of developing a map that we're certain of where the boundaries are, and maybe Leslie Salt will be 10 times more against it when it comes back here in a few months than they are right now.

But at least we would know what that map delineates. We would then have an opportunity to authorize it, and Fish and Wildlife could go about acquiring it.

I feel that we make a mistake when we put in this willing seller provision, because it, at least as far as I can see, it changes the entire way in which the Federal Government acquires these type of habitats.

Mr. STUDDS. I say to the gentleman, there's no mystery about the map, despite of where it may be as we speak. Certainly, I assume everybody at the table knows where the lines are.

Mr. BOSCO. Well, the only mystery about it, is why no one has had an opportunity to participate in it, I guess. Ordinarily wouldn't we ask the different entities, jurisdictions, the——

Mr. STUDDS. I don't know—there's no common law dictating this procedure within Congress' created refuges or parks in the past. It's gone about it as it would, as it wished at the moment, sometimes consulting people, and sometimes not. Those are substantive as well as political judgments.

Anyway, we happen to be in the middle of a public hearing on this very subject.

Mr. BOSCO. Pardon me?

Mr. STUDDS. At this moment we're having a hearing on this.

Mr. BOSCO. Well, I guess I just—speaking for myself, I'd feel more comfortable if we set the boundaries through some process of making sure that there's an integrity to the way it was done and then go ahead and allow the Fish and Wildlife to acquire the property.

Mr. STUDDS. Well, Fish and Wildlife has just testified they don't generally do that. That they established this entire refuge without taking any property, as I understood them, by eminent domain against the will of the seller.

Mr. HARTWIG. That's generally the case. I think what Congressman Boscos addressing, if I hear him right, is the fact that we normally would study an area and go through our NEPA compliance and do an environmental assessment to establish it. Although, you are right, Mr. Chairman, that there are several refuges that have been created instead by legislation—all that process has, in essence, been compressed and completed by Congress itself during its debates here on the Hill. Congress does not have to follow NEPA.

Mr. BOSCO. I think, Mr. Chairman, and this will be the last remark I need to make on this. But, I'd like to know if Mayor Smith is right, the land that's right next to the freeway—I've never seen any of this land, but that they had intended to use for industrial, maybe should be used for industrial and the Fish and Wildlife can find land that's close to that for their purposes. But it doesn't seem to me that we've really allowed enough of a latitude of working these things out.

Mr. STUDDS. Let me just ask Mr. Shepherd and Mr. Smith, would you folks be happier if we simply took the map as is, or minor changes perhaps, but basically as is, and remove the willing seller provision, thereby—I don't know. I didn't get the impression that your problem was the element of doubt created by that provision.

Mr. SHEPHERD. Our concern would be that the process be followed. Mr. Epstein is sort of castigating us for our good efforts. In a good will effort——

Mr. STUDDS. That's not unusual here. [Laughter.]

Mr. SHEPHERD [continuing]. We went to the environmental community and asked what their general interests were. So, yes, we started the conversation, but we were never consulted in the preparation of this map, and really almost had to use devious methods to get it to find out what it did show.

Mayor Morrison—you know, we try and educate public officials on our operations, and for the record, I do have to remind Mr. Morrison that when he flies over the bay he is not looking at crystallizers, he's looking at concentrators, and please, there's a significant difference in our business between the two. But when he was a member of the City Council, as he is now mayor, he voted an assessment on one of these parcels of $4 million. Leslie Salt is paying the City of Fremont $4 million for one of the parcels that's included in this map, and which is shown on the City of Fremont general map as industrial park, industrial property.

Now, I don't know if Mayor Morrison has had an opportunity to look at the map in that detail—of course, we have done so, because you know, you look at your own land. So the willing seller thing, that's not the question to us. The question is are we going to follow a process. If another Government agency wants to build a highway, or the Corps of Engineers wants to build a dam, they have a prescribed process they have to go through, with environmental impact statements. And here is a specific project that has not followed that process.

Mr. STUDDS. Were you around in 1972——

Mr. SHEPHERD. No, sir.

Mr. STUDDS. Was anyone here?

[No response.]

Mr. STUDDS. That's too bad.

Mayor MORRISON. I was not active. I was kind of just waking up in those days.

I would state that even though we have an assessment district to develop and improve, put infrastructure in, Leslie's parcel in our city, it will develop industrially. It will not become part of the refuge. I have no concern because local land use rules take precedence, and the only thing they preempt with is some 404 decision by the Corps of Engineers, because wetlands, and we don't believe that's there. So that land that's going to be valuable to Leslie in the future, for sure.

Mr. STUDDS. Mr. Shepherd, you don't happen to remember why it was that your company opposed this in the first place, 16 years ago, do you?

Mr. SHEPHERD. Well, I wasn't with the company at that time, sir. I'm sure it was the concern of the unknown. They had a major operation going producing this salt. They didn't know how compatible it would be with the refuge. It has worked out in an operational sense, and that's why when we come to you today we're not opposing the expansion of the refuge.

Please believe me, we are in favor of the expansion of the refuge. Our major concern has been the way this map has been put togeth-

er, and we would welcome any process which allows input from all people concerned.

Mr. STUDDS. What's the translation of that, that you would like some parcels excluded from the map?

Mr. SHEPHERD. Obviously, there are some parcels, but there are also other areas within the map that other people who aren't even at this table have interest in.

Mr. STUDDS. Last call. Anybody else want to have a word?

Mayor SMITH. Mr. Chairman?

Mr. STUDDS. Mayor Smith.

Mayor SMITH. Just one more statement.

I certainly agree with Congressman Bosco, I think there has to be integrity to this process, and to the way it's done. Mr. Hartwig has stated that normally this would go to study, and would go through NEPA compliance. I certainly would support that.

Mr. STUDDS. Incidentally, if anybody can remember the last time a proposed addition to a State or Federal park land was supported by everybody in the community, I'd like to know about it. [Laughter.]

Mayor MORRISON. Mr. Chairman?

Mr. STUDDS. Mr. Morrison.

Mayor MORRISON. I did some quick math. If 94 percent of this 20,000 acres is wetlands, that means there's 1,200 acres of uplands that still remains under local control. Mayor Smith said 44 percent of his city, 3,900 acres, so at least two-thirds of that or more is wetlands, is never going to be developed anyway. So when you put it in context, you should recognize that the wetlands need to be preserved. Land that is supportive of endangered species needs to be preserved, and we need to retain some of what's made us great in San Francisco Bay.

Mr. STUDDS. I think you were suggesting this was something of a tempest in a salt marsh?

Mayor MORRISON. Yes, yes.

Mr. STUDDS. Anyone else want another final word?

Mr. EPSTEIN. Mr. Chairman?

Mr. STUDDS. Mr. Epstein.

Mr. EPSTEIN. I was unaware that apparently there's no other situation where the right of eminent domain has been given up. It doesn't change our position.

Again, we have attempted to approach this from a very fair viewpoint, a citizen's concern about these wetlands. And I do firmly believe that the regulatory process and the normal local development process will give all sides more than adequate opportunity to argue the merits and demerits of development of a particular parcel. Much is being made of this line, which I think is perhaps unnecessary. The ultimate process will be the process that exists now at law. And we believe that will be a fair process, plus without the right of eminent domain, it will be perhaps more arms length bargaining. I don't doubt that we would come back and be arguing about that next time, if that were changed. We believe it's a fair process.

Mr. STUDDS. Finally, Mayor Morrison, I forgot to ask you, is there significant acreage within your city and within the lines on this map?

Mayor MORRISON. In this map, I'm sure. I didn't measure it, but I know that on Saturday I was coming across the Dumbarton Bridge, and I decided that I would try to find out how much of Fremont currently was in the refuge. And it was three miles from the Fremont City limits to the headquarters of the refuge. And that's the northern border. And I would guess that in Fremont's territory there probably is 10 square miles or more in Fremont, and I'm sure that a great deal of the expansion expands into Fremont, but as I said, I'm not worried because we control land use in that area.

Mr. STUDDS. Very good.

Mayor Smith, I would urge you to go north and/or west as fast as possible. This is not a healthy place, as you may have—sorry about this. [Laughter.]

I'm very, very sorry. But I want to thank you all. Each from your own perspective I think you've added a great deal. I'm not quite sure what the next step will be, but the Subcommittee intends to take a very careful look at this and hopefully we can find some semblance of a rational and humane consensus and proceed. In many of these cases it's a question of now or not at all, even though it may not be an emergency moment by moment.

Thank you all. You all traveled a long way. I appreciate that, but it's all in the wrong direction, so turn around and go back. [Laughter.]

Mr. SHEPHERD. Thank you.

Mr. STUDDS. The Subcommittee stands adjourned.

[Whereupon, at 2:40 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[The following was submitted for the record:]

I

100TH CONGRESS
2D SESSION

H. R. 4272

To enlarge the San Francisco Bay National Wildlife Refuge.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1988

Mr. EDWARDS of California (for himself, Mrs. BOXER, Mr. BOSCO, Mr. DELLUMS, Mr. KONNYU, Mr. LANTOS, Mr. MILLER of California, Mr. MINETA, Ms. PELOSI, and Mr. STARK) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

To enlarge the San Francisco Bay National Wildlife Refuge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENLARGEMENT OF REFUGE.

Section 2 of the Act entitled "An Act to provide for the establishment of the San Francisco Bay National Wildlife Refuge", approved June 30, 1972 (Public Law 92–330; 86 Stat. 399), is amended—

(1) by inserting "(a)" before "There shall be included"; and

(2) by adding at the end thereof the following new subsection:

★★

"(b) The boundaries of the refuge, as set forth in subsection (a), shall be adjusted so as to include those additional lands, marshes, tidal flats, salt ponds, submerged lands, and open waters in the San Francisco Bay area that are generally depicted on the map entitled "San Francisco Bay National Wildlife Refuge Additions—Proposed", dated March 1988, and comprise approximately 20,850 acres. The map referred to in the preceding sentence shall be on file and available for public inspection in the offices of the United States Fish and Wildlife Service.".

SEC. 2. ACQUISITION.

Section 4 of such Act of June 30, 1972, is amended—

(1) by striking out "That lands, waters, and interests therein" and inserting "That (1) lands, waters, and interests therein within the boundaries set forth in section 2(a) (before adjustment under section 2(b))"; and

(2) by inserting before the period the following: "; and (2) the lands, waters, and interests therein referred to in section 2(b) may only be acquired from willing sellers and donors".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 5 of such Act of June 30, 1972, is amended—

(1) by inserting "(a)" before "There"; and

(2) by adding at the end thereof the following new subsection:

"(b) There are authorized to be appropriated for the acquisition of the additional lands, marshes, tidal flats, salt ponds, submerged lands, and open waters referred to in section 2(b) such sums as may be necessary; and the sums appropriated under the authority of this subsection shall remain available until expended.".

ONE HUNDREDTH CONGRESS

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Committee on
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DUNCAN C. SMITH III

July 6, 1988

BACKGROUND MEMORANDUM

TO: Members, Subcommittee on Fisheries and Wildlife Conservation and the Environment

FROM: Subcommittee Staff

RE: Hearing on H.R. 4272 - A bill to enlarge the San Francisco Bay National Wildlife Refuge.

On July 12, 1988 at 1:00 p.m. in room 1334 of the Longworth House Office Building, the Subcommittee on Fisheries and Wildlife Conservation and the Environment will hold a hearing on H.R. 4272, a bill to enlarge the San Francisco Bay Wildlife Refuge.

BACKGROUND

H.R. 4272 was introduced on March 29, 1988 by Congressman Don Edwards with the cosponsorship of all of the Members of the California delegation from the San Francisco Bay area. Included among the cosponsors are Subcommittee members Ernest Konnyu and Douglas Bosco.

This bill would basically double the size of the existing San Francisco Bay National Wildlife Refuge, which was established in 1972 by Public Law 92-230. The additions proposed in H.R. 4272 comprise 20,850 acres. Earlier this session, the Committee reported H.R. 2583, authorizing additional appropriations for completion of land acquisition within the original boundaries of the refuge, which encompass 21,662 acres of lands and waters. That bill, though opposed by the Administration, was signed into law by President Reagan last December.

San Francisco Bay National Wildlife Refuge was originally established to protect remnant tidal wetlands at the south end of San Francisco Bay in northern California. At the time of the enactment of P.L. 92-230, nearly 70% of the Bay's once extensive wetlands had been filled to accommodate urban development. The legislated purposes of the refuge are "for the preservation and enhancement of highly significant wildlife habitat in the area known as south San Francisco Bay in the State of California, for the protection of migratory waterfowl and other wildlife, including species known to be threatened with extinction, and to provide an opportunity for wildlife-oriented recreation and nature study within the open space so preserved."

Because so much of the Bay's historic wetlands have been lost, remaining wetlands there have increased in their importance to migrating waterfowl in the Pacific flyway, and to resident species such as the salt marsh harvest mouse and California clapper rail, both of which are on the endangered species list. Other endangered species using this area include the California least tern and the peregrine falcon.

Tremendous economic growth, particularly in the southern portion of the Bay, adjacent to "Silicon Valley", has increased development pressures on these lands and on their wildlife resources. Those development pressures have also increased the need for and value of open space in this area. The existing San Francisco Bay National Wildlife Refuge now hosts approximately 1 million visitors a year.

Much of the land proposed for addition to the refuge by H.R. 4272 is owned by the Leslie Salt Co., a subsidiary of Cargill, Inc. Portions of these lands consist of evaporation ponds for the crystallization of salt (sodium chloride) from sea water in the Bay. The proposed additions also include significant acreage of non-tidal, seasonal wetlands believed to be an important complement to the tidal wetlands and salt ponds that comprise most of the existing refuge. The third component of the proposed additions consist of dryer, upland sites.

H.R. 4272 is supported by the three counties in which the proposed additions lie (Alameda, Santa Clara, and San Mateo); the adjacent cities of San Jose, Fremont, Milpitas, Mountain View, Belmont, and Palo Alto; and the California Wildlife Federation, the California Waterfowl Association, the Sierra Club, and several local Audubon Societies.

The bill is opposed by Cargill, Inc. and by the Mayor of Newark, California.

ISSUES

COST--Acquisition costs for the existing refuge have averaged approximately $1,000 an acre. The Fish and Wildlife Service has recently indicated, however, that it now estimates the cost of acquiring all the lands indicated on the map reference in H.R. 4272 to be as much as $200 million. Most of that cost is associated with a relatively small acreage of potentially developable upland sites, but the new estimates peg the cost of proposed wetland additions at more than $3,000 an acre.

CONFLICT WITH POTENTIAL COMMERCIAL DEVELOPMENT--Virtually every proposal for additional Bay shore industrial or residential development is highly controversial, as shoreline development is both potentially highly profitable and highly problematic for the health of San Francisco Bay, whose fisheries and wildlife have suffered greatly from pollution, diminishing fresh water inflows, and loss of wetlands. Some of the additions to the refuge proposed in H.R. 4272 could conflict with development proposals for the near future or hoped-for future development sites.

CONDEMNATION AUTHORITY--H.R. 4272 provides that additions to the refuge may only be acquired from willing sellers. The Fish and Wildlife Service is concerned that this may make it impossible to clear title on some of the proposed additions, as there are conflicting claims of ownership on some due to unresolved claims to tidal and historically tidal lands between the State of California (claiming ownership of submerged lands) and private parties. The Fish and Wildlife Service has suggested that the only logical way to obtain a clear title on these lands may be "friendly condemnation"--a condemnation taken to the courts at the behest of all involved parties as a way to obtain a binding determination of who owns what. The Service wants to make sure that the language of H.R. 4272 does not preclude this option.

TESTIMONY OF WILLIAM F. HARTWIG, CHIEF, DIVISION OF REALTY, UNITED STATES FISH AND WILDLIFE SERVICE, BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, REGARDING H.R. 4272, EXPANSION OF SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE

July 12, 1988

Mr. Chairman, I am William F. Hartwig, Chief of the Division of Realty, United States Fish and Wildlife Service. I am accompanied today by Ms. Georgia Shirilla, Senior Realty Specialist from our Regional Office on the West Coast, and Mr. Richard A. Coleman, Manager of the San Francisco Bay National Wildlife Refuge. We are pleased to be here today to discuss H.R. 4272, proposing to expand the San Francisco Bay National Wildlife Refuge.

The Administration is opposed to the enactment of H.R. 4272.

H.R. 4272 would add approximately 20,850 acres to the Refuge. Acquisitions would be statutorily limited to those from willing sellers. Such sums as may be necessary would be authorized for appropriation, and any funds appropriated would remain available until expended.

Although this area currently ranks fifth on the Service's Land and Water Conservation Fund priority list, no acquisition funds or authorizations for new refuges have been requested.

The Fish and Wildlife Service has acquired all but 2,406 acres of the 21,662 acres authorized for the refuge. We have utilized $13,191,500 for these purchases. The cost of the remaining 2,406 acres estimated at $2,000,000.

However, because of large budget deficits the Administration does not believe additional land purchases are warranted at this time. In this particular case there has already been a sizable Federal expenditure for land acquisition at the Refuge, and nearly 90 percent of the authorized area is in Federal owership as a result. The Administration accordingly has no plans to request additional appropriations for the Refuge, or to otherwise seek additional land acquisition there at this time.

In addition, the present Refuge lands provide significant local recreational and tourist opportunities, with over one million visitors to the Refuge annually. Because of this, the Administration believes it would be entirely appropriate for State or local governments or other interests to bear the costs of any additional land purchases if they believe additional lands should be placed in a protected status there. The Administration does not believe there is a compelling Federal interest for additional land purchasees at the Refuge; if there is a local interest it should be financed accordingly.

Although we have done no appraisals or field work, our current estimate of the cost of the acquisition proposed by this bill

(which includes discussions with private appraisers knowledgeable about the area) is approximately $200 million. $60 million of this would be for acquisition of salt ponds, wetlands, marsh areas and submerged lands (assuming continued use of the salt ponds by the current owner for salt production until they are no longer needed for that purpose), and $140 million would be for upland areas. We estimate there are approximately 65 ownerships within the area identified for acquisition, 35 of which are individual small lots.

It should be noted that the approximately $200 million cost of this proposal is four times the total amount appropriated for Fish and Wildlife Service land acquisition in fiscal year 1988, and twice the total amount provided to the entire Department of Interior for this purpose.

The San Francisco Bay National Wildlife Refuge was established by Public Law 92-330 on June 30, 1972. That Act directed the Secretary of the Interior to designate approximately 21,662 acres of wetlands in the South San Francisco Bay area for protection and enhancement of waterfowl and endangered species habitat, outdoor recreational opportunities and interpretative education. An authorization of $9 million, effective through June 20, 1977, was provided for land acquisition, and $11 million was authorized for management and facilities at the refuge.

Acquisition of land from the State of California or any of its subdivisions was authorized only by donation, while all other

lands within the authorized boundary were authorized to be acquired by purchase, donation or exchange. Public Law 95-299, on June 26, 1978, extended the authority for appropriations through September 30, 1980.

Public Law 96-290, on June 28, 1980, authorized the Secretary to acquire lands subject to the interest of the State of California in lands now or formerly flowed by the tide, including the public trust. This law also increased the land acquisition authorization to $13,200,000, to remain available until September 30, 1983, and the facilities authorization to $11,300,000, to remain available until expended. Public Law 98-327, on June 25, 1984, revised the acquisition authorization further by permitting the authorized amount to remain available until expended.

Public Law 100-226, on December 31, 1987, further revised the acquisition authorization by removing the dollar ceiling and authorizing "such funds as may be necessary."

We strongly oppose the restriction on use of condemnation authority contained in H.R. 4272.

Although the Service generally acquires property from willing sellers only, statutory restriction of the right of eminent domain is a concept we have not supported in any previous authorization or expansion of a National Wildlife Refuge. While our use of condemnation has been extremely limited, we believe its availability is essential, to resolve title problems and price difficulties.

This concludes my prepared statement. I would be pleased to answer any questions you may have.

Gus Morrison, Mayor

City of Fremont

39700 Civic Center Drive
P.O. Box 5006
Fremont, California 94537

(415) 790-6604

July 12, 1988

Statement before the Subcommittee on Fisheries and Wildlife Conservation and the Environment requesting expansion of the authorized boundaries of the San Francisco Bay National Wildlife Refuge

Mr. Chairman and members of the Committee, my name is Gus Morrison. I am Mayor of the City of Fremont and a member of the Committee to Complete the San Francisco Bay National Wildlife Refuge. Thank you for allowing me to testify, both personally and on behalf of my city, in support of the expansion of the Refuge.

Fremont, in its 32 years of existence, has grown from 25,000 people to almost 170,000. We continue in a period of rapid growth in all sectors, residential, commercial, and industrial. Our city comprises more than 90 square miles. Today, we are the fourth largest city in the bay region in population and the fifth largest city in the state in area.

Despite this rapid growth, we take great pride in building a special city, one which provides a variety of life styles, interests, and opportunities for our citizens. We are especially committed to preservation and enrichment of the character of life of our past and our environment. In 1964, we bonded ourselves to build one of the nation's great parks to provide a part of that ambience. We have stressed the preservation of

open space as the community developed and, in 1981, by citizen initiative, the eastern foothills of Fremont were restricted forever from destructive development.

It is in this context that we support HR 4272. Fremont is proud to be the home of the Refuge. Its headquarters and interpretive center are in Fremont, as are many square miles of its territory. The Refuge contributes to the quality of life in Fremont in many ways, in school programs for young people, recreational opportunities for people of all ages, duck hunting without long drives from home, fishing from the remains of the old Dumbarton Bridge (without a license), birdwatching, or simply escaping from the troubles and demands of our urban environment for a respite. The Refuge is there for us.

But more, it is a model and a symbol. It is a model of what can be in other areas of our nation and our world. We can retain the beauty and tranquility of nature in an urban setting. The Refuge proves it is possible, even necessary, to provide our people with a reminder of what once was and offer hope of what might be. People from all over the world come to Fremont to visit and wonder at the success of this Refuge, this island of tranquility in our urban ocean.

But it also is a symbol, a symbol of what once was and what will never be again. From the time the white man discovered San Francisco Bay in 1769 until 1964, when protective legislation was enacted, one third of the original San Francisco Bay had been filled. Where once birds, fish, shellfish, and other wildlife flourished, man destroyed so man could build. The bay was filled, its waters polluted with sewage, dredge spoils, heavy metals, and other by-products of our careless, industrialized society. We were fortunate the South San Francisco Bay had not developed as rapid-

ly. We were able to retain and preserve what has become our Refuge, this small symbol of our past.

The Refuge, as designed originally, dealt with the realities of its time. It preserved well the area possible and practical then. The founders, however, did not address the necessary areas surrounding the refuge, the support system of wetlands and uplands necessary to permit the proper function of the Refuge and its wildlife. Since the bay was first mapped, more than 90% of its wetlands have been destroyed. These fragile lands are amenable to developers for they are flat, easy to fill, and close to our urban infrastructure. One bulldozer can destroy tens of acres of wetlands in a day.

Others can tell you, more eloquently, of the value of these wetlands from an ecological standpoint. It is important for me to tell you that every significant wetland parcel in South San Francisco Bay has some sort of development proposal pending.

Many have proceeded without benefit of a Corps of Engineers permit, resulting in cease and desist orders. By then, the wetland is destroyed. These lands are under constant threat.

The City of Fremont believes the expansion of the Refuge will help alleviate this threat. We know this bill is not a regulatory bill. We know the Fish and Wildlife Service does not normally condemn land for acquisition. We know this bill would then only allow the Service to negotiate and purchase appropriate land from willing sellers. And we know the bill contains no appropriation for such purchase. It is also clear to us that, as a result of this bill, no landowner will be unable to develop his land to its highest and best use.

But even with these limitations, we believe a developer or land owner, once they understand the regulations which apply to them, may look for someone to purchase their land for some use. Under the Clean Water Act of 1975, there is no development value to wetlands. No permit has been issued by the Corps of Engineers, before the fact, in years. Purchase by the Service, at wetlands values, will serve a public benefit and provide the land owner opportunity to sell the land.

Fremont, in September 1986, was the first city to support the expansion of the Refuge. We remain ardent supporters of the concept and look forward to working with the Fish and Wildlife Service, landowners, and private and public funding sources to make the completed Refuge a reality.

We urge your favorable action on this important legislation. It permits the completion of the San Francisco Bay National Wildlife Refuge, setting the goal. It is up to us, and those who follow us, to make that goal a reality. I remind you that the problem with most things is not that we set our goals too high and miss them, but rather that we set them too low and hit them. I implore you to give us a lofty goal and watch us hit it! Thank you for the opportunity to represent the City of Fremont before you.

CITY OF NEWARK, CALIFORNIA
37101 Newark Boulevard Newark, California 94560 415/793-1400

June 29, 1988

STATEMENT BY MAYOR DAVID W. SMITH, NEWARK, CALIFORNIA, BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, U.S. HOUSE OF REPRESENTATIVES, JULY 12, 1988, REGARDING H.R. 4272.

While I support expansion of the San Francisco Bay National Wildlife Refuge into the City of Newark, I oppose the boundaries of the proposed 3,900 acre expansion into our community. This expansion would incorporate 44% of the city's total area into the Refuge, and have a devastating effect on our future economic development! I urge you to review these boundaries, and scale them back so that a balance is achieved between Newark's economic future and wildlife habitat preservation.

H.R. 4272 authorizes the purchase of 20,850 acres of land, which it describes as 7,086 acres of seasonal wetlands, and 13,764 acres of salt ponds. In my opinion, the boundaries include undeveloped upland parcels. The map accompanying the legislation was prepared without consultation with affected property owners or our City government.

The attached map illustrates that Newark is nearing the final stages of its development. Given the constraints placed on property tax growth by California's Proposition 13, it will be difficult to maintain or increase the current level of municipal services with the current tax base.

A portion of the proposed Wildlife Refuge expansion has been planned for industrial use since the 1960's. Industrial development is critical to the economic welfare of a city because it provides a net property tax revenue to offset the cost of serving residential development. Newark's residential development is virtually in place. We need additional industrial development to complement it.

Redrawing H.R. 4272's boundaries as proposed on the attached map will allow Newark to plan its own destiny. We are currently doing a major General Plan update, Project 2007. Extensive work on this General Plan update has already been accomplished by more than 100 citizens. I would like to see the Project 2007 process serve as a model for community planning. I recognize that portions of the property outside proposed Refuge boundaries will be subject to the regulation of various federal agencies through the permitting process. Habitat may be preserved under existing Federal statutes. Actual wetlands

must be protected, but removal of large segments of developable property from Newark's tax base is not justifiable.

Once boundary lines of the Wildlife Refuge expansion are delineated by H.R. 4272, the property becomes "holy ground", and we would be transgressing the "official intent" of Congress to even consider development within these boundaries. Please consider redrawing the boundaries as soon as possible so that we may realize our desires of wildlife habitat preservation and continued economic development.

DAVID W. SMITH
Mayor, Newark, California

DWS:tcw

GARCIA, BRUZZONE & GALLIANO
A LAW CORPORATION
16101 EAST 14TH STREET
SAN LEANDRO, CALIFORNIA 94578
351-6161 OR 278-1172

ANTHONY J. GARCIA
LELAND J. BRUZZONE
GARY T. GALLIANO
BRIAN D. HUFFORD

July 7, 1988

Honorable David W. Smith, Mayor
CITY OF NEWARK
37101 Newark Boulevard
Newark, California 94560

Re: H.R. 4272 to Enlarge the San Francisco Bay National Wildlife Refuge

Dear Mayor Smith:

This is in response to your request for our opinion as to the effect of H.R. 4272 on the City of Newark.

Section 1. Enlargement of Refuge provides as follows:

"SECTION 1. ENLARGEMENT OF REFUGE.

...

(b) The boundaries of the refuge, as set forth in subsection (a), shall be adjusted so as to include those additional lands, marshes, tidal flats, salt ponds, submerged lands, and open waters in the San Francisco Bay area that are generally depicted on the map entitled San Francisco Bay National Wildlife Refuge "Additions--Proposed", dated March 1988, and comprise approximately 20,850 acres. The map referred to in the preceding sentence shall be on file and available for public inspection in the offices of the United States Fish and Wildlife Service."

Section 3. Authorization of Appropriations provides as follows:

"SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 5 of such Act of June 30, 1972, is amended--

(1) by inserting "(a)" before "There"; and

(2) by adding at the end thereof the following new subsection:

> **(b) There are authorized to be appropriate for the acquisition of the additional lands, marshes, tidal flats, salt ponds, submerged lands, and open waters referred to in section 2(b) such sums as may be necessary; and the sums appropriated under the authority of this subsection shall remain available until expended."."**

On its face, this legislation appears to be permissive only. By this legislation, Congress is authorized to appropriate funds for the acquisition of additional lands.

By this language, one could be mislead into taking the position that this Act has little effect on the City of Newark and its property owners by virtue of the enlargement of the San Francisco Bay National Wildlife Refuge. The City of Newark is presently redoing its master plan. By this Act, Congress is telling the City of Newark that its planned industrial land is within the San Francisco Bay National Wildlife Refuge and is no longer industrial. In short, Congress is now planning the City of Newark.

It is argued that the acquisitions are not fixed, as lands may only be acquired from a willing seller, as stated in Section 2(b), line 20, provided as follows:

> "...
>
> **(2) by inserting before the period the following: "; and (2) the lands, waters, and interests therein referred to in section 2(b) may only be acquired from willing sellers and donors".**

What this really means is that Newark's revenue will be vitally effected, that these lands will be subject to a cloud and may not be developed pursuant to the City's existing plan, and must be considered in the City's master plan, which is presently being studied for adoption. Additionally, what this causes is the diminution of the values of the property, in that the only buyer would be the Federal Government. This means that there is only one buyer and a closed market.

The Fifth Amendment to the United States Constitution provides as follows:

> **"Amendment 5**
>
> **...; nor shall private property be taken for public use, without just compensation."**

The real question is whether or not the designation of property, as a part of the San Francisco Bay National Wildlife Refuge, places a cloud on the title affecting its market value, and whether or not similar action under state law would be considered a taking.

Sixty-six years ago in Pennsylvania Coal vs. Mahon, 260 U.S. 393, 415, (1922), Justice Holmes said:

> "Justice Holmes said that "the question at bottom is on whom the loss of the changes desired should fall," and he warned "[w]e are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal, supra, at 416. The Fifth Amendment's guarantee is "designated to bar Government from forcing some people alone to bear public burdens which, in an fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960).
>
> While it is easy to say that a regulation can "go too far" and constitute a taking for which the Fifth Amendment commands just compensation, or to talk in terms of "justice and fairness," it is not so easy to propose any standard which, in any given case, would determine whether regulation had gone "too far." Holmes himself admitted the necessary generality of his approach: "[T]his is a question of degree -- and therefore cannot be disposed of by general propositions." Pennsylvania Coal, supra, at 416."

The question of what constitutes a taking is evolving and changing by the minute. This is discussed in Keystone Bituminous Coal Ass'n v. De Benedictis 480 U.S. _____, 107 S. Ct. 1232 (1987).

> "The Court also noted another important factor:
>
> [T]he type of taking alleged is also often a critical factor. It is well settled that a "taking" may more readily be found when the interference with property can be characterized as a physical invasion by the government [citation omitted] than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." Keystone Coal, supra, at 1243.

Writing before the court in the Pennsylvania Coal, supra, case, Justice Holmes explained:

> **"Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. So the question depends on the particular facts."**

Specific facts must be considered in each case. It appears, from the reading of the legislation in question, that there is a cloud cast upon certain lands and limitations on city planning.

Recently, the Supreme Court is taking an increasingly protective posture towards property rights, and there seems to be a trend towards allowing compensation where no compensation was previously allowed. It was considered to be the law that down-zoning was not a taking. However, in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, _____ U.S. _____, 107 S. Ct. 2378 (1987), the Court established that monetary damages are available and that regulations may constitute a taking for which damages are allowed.

Recently, the Supreme Court ruled that a beach access dedication requirement, imposed by the California Coastal Commission as a condition to its approval to construct a beach house, was unconstitutional where an easement was required, and constituted a "taking a private property without just compensation". Nollan v. California Coastal Commission, _____ U.S. _____, 107 S. Ct. 3141 (1987).

We have not as yet felt the full impact of these decisions. It appears to me that if a demand for an easement constitutes an unconstitutional taking, a regulation placing land in a wildlife refuge may be held to diminish property value and constitute a taking. These cases have established that there can be a taking without physical invasion of the property. In view of this, it is difficult to say how the law will ultimately evolve in view of the present composition of the Supreme Court.

It is my view that this Court will expand the concept of taking, and that ultimately the regulation as proposed by H.R. 4272, if adopted by the city, would be a taking for which just compensation would be required under the Fifth Amendment of the United States Constitution.

I believe that by the enlargement of the San Francisco Bay National Wildlife Refuge, a good argument can be made that the additional regulations, which will ultimately effect property use, will diminish property values. The ultimate effect of this proposed legislation is to widen the gap between the environmentalist and the development community and cause endless litigation through the bureaucratic processes required in seeking permits for those lands which are, in fact, developing.

By the adoption of this legislation, the Congress of the United States of America is telling the City of Newark it cannot allow development of lands which have been master planned for years as industrial. Adoption of this legislation will deprive the City of Newark of badly needed revenue. Should the City plan consistent with this proposed legislation, I believe we may become unwilling parties to endless litigation. I urge you to oppose this legislation, as it adversely effects the City of Newark.

Respectfully submitted,

Anthony J. Garcia

ANTHONY J. GARCIA
City Attorney

AJG:dkm

cc: City Council
Mr. Richard W. Turnlund, City Manager

Testimony of

Paul P. Shepherd
Vice President

Leslie Salt Co.
7200 Central Avenue
Newark, California

Before the
Subcommittee on Fisheries and Wildlife
Conservation and the Environment

Committee on Merchant Marine and Fisheries

Hearing on H.R. 4272,
a bill to enlarge the San Francisco
Bay National Wildlife Refuge

July 12, 1988

Mr. Chairman and members of the subcommittee, I am Paul Shepherd, vice president of Leslie Salt Company. Our company strongly supports responsible expansion of the San Francisco Bay National Wildlife Refuge. But, for the reasons that I will outline for you, we must just as strongly oppose the approach used by the bill, H.R. 4272, which is the subject of this hearing.

Leslie Salt Co. is a subsidiary of Cargill, Inc. Leslie has been farming salt from San Francisco Bay water for more than half a century and is the only surviving salt company in our area. We harvest more than one million tons of salt each year from our three San Francisco Bay locations. We employ 350 workers in the area and add 150 more during the four months of our harvest season.

We produce our salt by concentrating sea water that we draw in from the Bay. It is an entirely benign use of the Bay that is harmonious with its environment. In fact, salt production is recognized in California State law as a beneficial use of the Bay.

It takes five years for the wind and sun to increase the salinity of the brine to the saturation

point, at which time salt will start crystallizing out of solution. If you have flown in or out of San Francisco airport, you may have noticed the multi-colored ponds around the southern and eastern edge of the Bay. Those are our concentrator ponds.

In addition to the concentrator ponds, we have two plant sites in the area that would be covered by H.R. 4272. Each plant site includes rectangular areas that we call crystallizers. These are shallow manmade beds where the precipitation of the salt takes place prior to the annual fall harvest.

One plant is at Redwood City where we produce only solar undried salt. The second plant is in Newark, where a majority of the salt is further refined and packaged. Our food grade salt is produced at Newark. At these sites, salt is processed, refined and stored for shipment by barge, rail or truck. We also have a few surplus acres, not used for any salt production or storage purposes.

We indeed appreciate the intention of the drafters of the legislation to promote the expansion of the wildlife refuge. Our company is committed to the protection of the Bay and its wildlife, and, as I have indicated, we fully support the goal of expanding the refuge. However, we do not believe that H.R. 4272, as

currently drafted, is the proper or fair way to go about achieving this desirable goal.

H.R. 4272 would authorize the expansion of the San Francisco Bay National Wildlife Refuge by 20,850 acres. The government would be authorized to buy those acres only from "willing sellers," so that, in theory, the government would compete with other potential buyers on the open market for lands that it desires.

The language of the bill incorporates by reference a map that has been prepared by the U.S. Fish and Wildlife Service. This map would establish expanded boundaries for the existing 23,000-acre refuge that incorporate additional lands, marshes and the like.

Mr. Chairman, our specific problem with this bill is the incorporation of the map prepared by the U.S. Fish and Wildlife Service. As the boundaries are proposed, Leslie Salt Co. has a major stake in this legislation.

Leslie Salt owns well over 17,000 acres of the 20,850 acres that are the subject of the map. That comes to approximately 85 percent of the land authorized for acquisition under this bill. Moreover, the line drawn on the map takes in almost all of our developable lands.

Yet, at no time during the drafting of this map were we consulted. Nor did the mapmakers consult with other landowners in the area, local governments, or the

state highway department or others with legitimate private or public interest in the land that is the subject of this bill.

The map was prepared by a single-purpose federal agency. It has been represented as a conceptual map only, but that is not the case. Specific parcels are included or excluded. The map's boundaries are anything but general or conceptual in nature.

The targeting of so much of our land holdings for the expansion proposed by this legislation threatens our company with real economic harm. Regardless of the good intentions behind this bill, the practical effect of the inclusion of the map in H.R. 4272 has been to cast a cloud over the land parcels that are located within its boundaries. The mere existence of the map in an unreported bill already reduces the value of these lands.

Since the map's creation we have learned of several requests for downzoning of land that we own more than two miles from the Bay. In one instance, an effort by the City of Newark to rezone a parcel of land as part of its mandatory general plan review has been challenged by an opponent who has raised the map as evidence of the federal government's plans for the tract.

This has just been the impact we have felt from a proposed bill, not an enacted law. The incorporation of

the map in other words is tantamount to a federal lien on the properties included within its boundaries.

Leslie Salt supports the refuge in San Francisco Bay. The wetlands and other areas protected by the refuge help protect the environmental quality of the Bay. This is important to us both as residents of the area and as commercial users of Bay waters. No one has a greater stake in a healthy Bay than Leslie Salt.

In 1979, for example, the U.S. Fish and Wildlife Service purchased more than 12,000 acres of Leslie land to form the original refuge. We continue to concentrate Bay water in ponds on this acreage, which also provide excellent habitat for a wide variety of birds. In fact, both the variety and number of birds found in the Bay area are considerably larger thanks to these ponds.

We also have demonstrated our support for the expansion of the refuge. More than a year ago, we offered two separate parcels of surplus land to the Service. Over the past four months we have been negotiating with the Service over the sale of another surplus parcel.

Since 1980, we have also given away or sold more than 1500 acres of other surplus land to nonprofit groups and local government agencies. All of this land is now protected for public use.

Mr. Chairman, we regret that we must oppose H.R. 4272, as we do support its general purpose. However, we respectfully urge you and this subcommittee to reject this legislation. The inclusion of the map in this bill, which was drawn outside the normal consultative process, wrongfully diminishes the value of private property and interferes with the lawful authority of local communities to make land use decisions.

We do believe that there is a way to move forward together to achieve the same goals sought by this bill. We are confident there is a satisfactory way to protect the fragile natural environment of San Francisco Bay, a resource Leslie Salt Co. has shared stewardship of for over half a century. We would welcome the opportunity to work with you and your staffs to try to resolve our difficulty with the approach now contained in H.R. 4272.

For example, one approach that we have raised would be to move the bill without incorporation of the map. It would then be an open-ended authorization for the acquisition of the additional acreage for the San Francisco Bay National Wildlife Refuge. Such an approach would both signal the government's intent that expanding the refuge deserves a higher priority and remove the stigma that the current version of the bill now imposes on private land holdings in the area.

We encourage the federal government to negotiate fairly with property owners for any parcels in which the government may be interested. However, we do not believe it is fundamentally fair for the government to attempt to stack the deck in its favor by intimidating other potential buyers with legislated maps. This is the practical effect of the map and completely contradicts the legislation's concept of a willing seller.

Thank you for this opportunity to present our concerns.

LESLIE SALT

Salt. Mention it and most people think of table salt. Yet only about 3% of our product ends up on the table. About 70% is used in various industrial processes, from bleaching paper pulp to manufacturing laundry detergent. Our salt is also used in the water conditioning, canning and animal feed industries. *It takes five years and twenty billion gallons of Bay water to produce each annual crop of salt. The multi-colored ponds ringing the Bay, from Redwood City to Hayward in the south and at Napa in the north, retain the brine over the five year period. The sun and wind evaporate the water, raising the salt concentration. The colors in the water come from different microorganisms which thrive at various levels of salinity.* *When the brine becomes fully concentrated it is pumped into large crystallizer beds. It is here the salt crop crystallizes out of the brine—over a million tons a year in total at our three harvest areas: Newark, Redwood City and Napa. We also reap other minerals from the concentrated brine, which are sold for uses as varied as pharmacy and road construction. An independent contractor harvests brine shrimp, used as fish food, from some of our ponds.*

WILDLIFE HABITAT

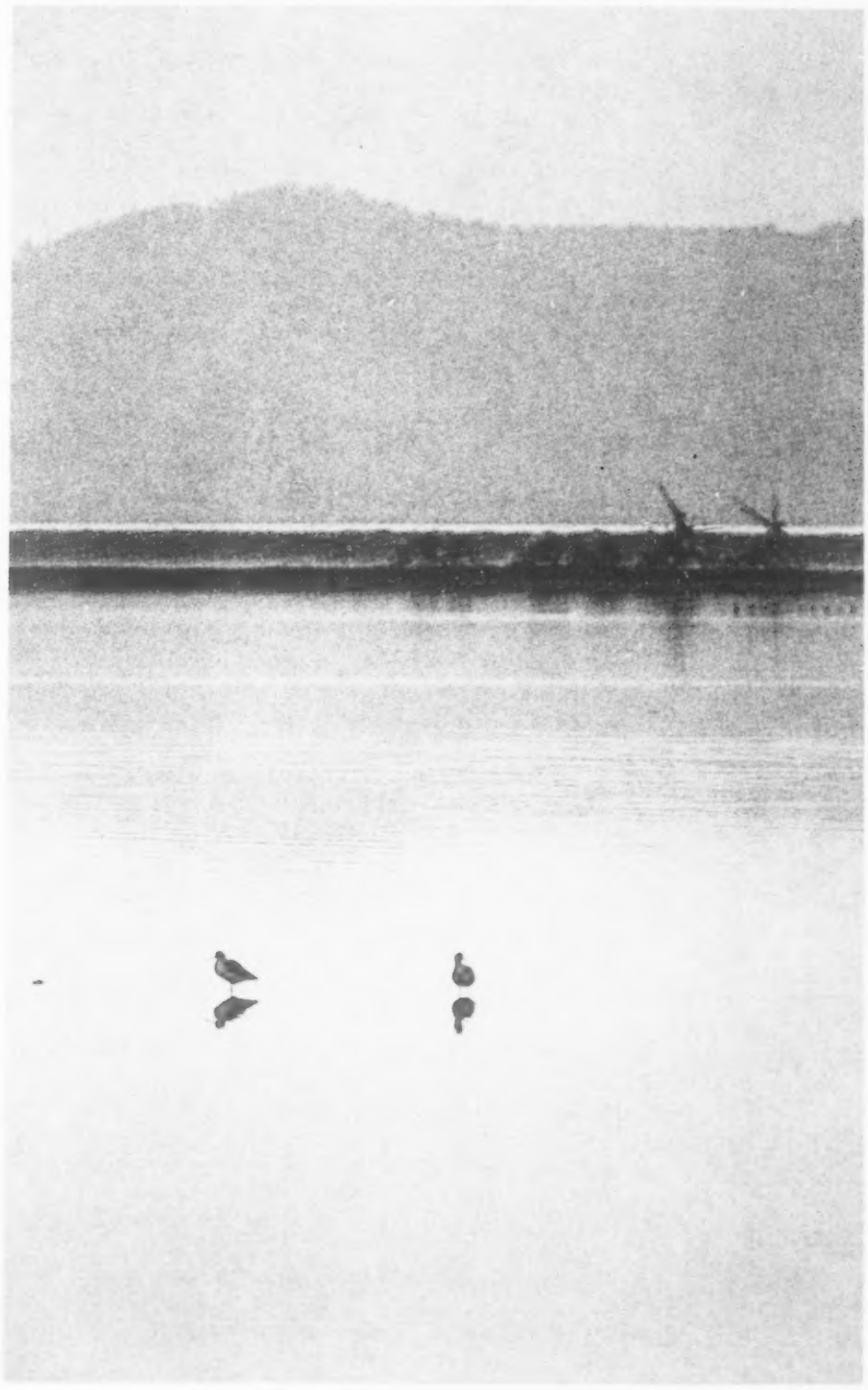
More than 12,000 acres of our salt ponds are inside a U.S. Fish and Wildlife Service Refuge in the South Bay. The many ecosystems provided by our levees, ponds and dredgelocks support large populations of birds, many of which would not otherwise be found in this area. *The changing salinities of our ponds supply a range of food sources for different types of birds. Our intake ponds are rich in fish and invertebrates sought after by pelicans, gulls, wading birds, grebes and cormorants. As salinity increases, pond life undergoes significant changes. Here other birds such as phalaropes and shorebirds find the brine shrimp, water boatmen (an insect)*

and algae they seek for food. *Man has harvested salt from the Bay for commercial use for many hundreds of years. Early Spanish explorers found local Indians collecting salt from natural tide pools for barter with inland tribes.* *At the height of the Gold Rush, Captain John Johnson discovered man-made dikes could be used to create salt ponds. His first crop of salt, produced in 1854, sold for fifty dollars a ton. Others entered the business, driving the price down to two dollars a ton a few years later. Late in the last century there were dozens of small salt companies in the Bay Area.*

HISTORY

Competition narrowed the field, and in 1936 two of the largest remaining companies joined as Leslie Salt Co. Today, we are the only salt producer along the shores of the Bay. Some of our nearly three hundred miles of levees are a century old. The process we use—evaporation and crystallization—is in principle unchanged from the early Indian times. For hundreds of years this benign use of the Bay has existed in harmony with nature. *We are an agricultural company in high-tech Silicon Valley, farmers among the Fortune 500. We are the stewards of nearly 40,000 acres of fragile natural environment located in the fourth largest metropolitan area in the U.S. We work in concert with the tides, the wind, the rain and the sun. We produce a crop, year after year, while preserving thousands of acres of open space and wildlife habitat.* *And we are family. It is not unusual, even in this region of nearly continual migration, to find Leslie employees with 25, 30, 35, even 40 years of service with the company. Nor is it unusual to find husband and wife, brothers, cousins, sons and daughters working together at Leslie.* *It was these unique characteristics which caused the Schilling family, our majority shareholders from*

COMPANY PROFILE



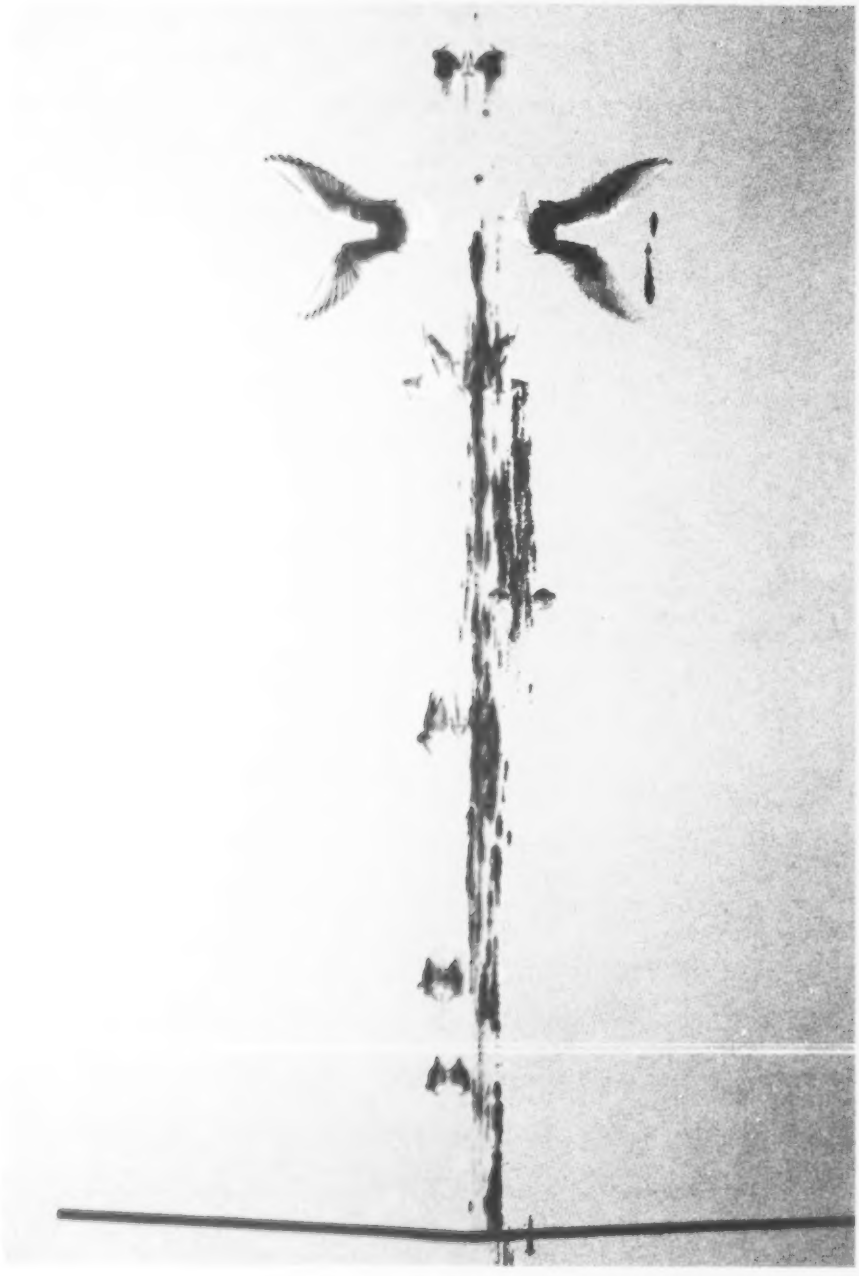
1936 until 1978, to spend several years seeking an appropriate new owner when they decided to sell. That new owner was Cargill, largest privately owned company in the United States, but family owned and managed and run with a strong sense of Midwestern morality. We were purchased for our salt, here and at our facilities in the Mojave Desert and on Australia's western coast. But we have other assets, too: Several thousand acres of land not needed for salt production. As landowners at the edge of the Bay, we experience first hand all of the pressures felt by the estuary itself and by its guardians, the conservation groups who watch over it and the government agencies charged with its protection. We, too, must face often competing needs for wildlife habitat, transportation, job creation, recreation, water quality and open space preservation.

LAND MANAGEMENT

To deal in a responsible way with our surplus lands, we have called on these government agencies and conservation groups for assistance. With their help, we are beginning an innovative planning process to guide the use and disposition of all of our land holdings. We have asked the California Environmental Trust to manage this process for us. We expect to proceed in the same spirit that has guided us in the past. Since 1979, Leslie has donated or sold below market value more than 1,400 acres of surplus land. The beneficiaries of our largess have included the Peninsula Open Space Trust, the Hayward Area Shoreline Park Association, the Marine Ecological Institute and Shoreline Park in Mountain View.

CORPORATE PHILANTHROPY

We engage in other activities in support of non-profit organizations, too. Beginning in the mid-1950s, the company has matched employee contributions to the United Way. We sponsor youth baseball and soccer teams and assist in funding edu-

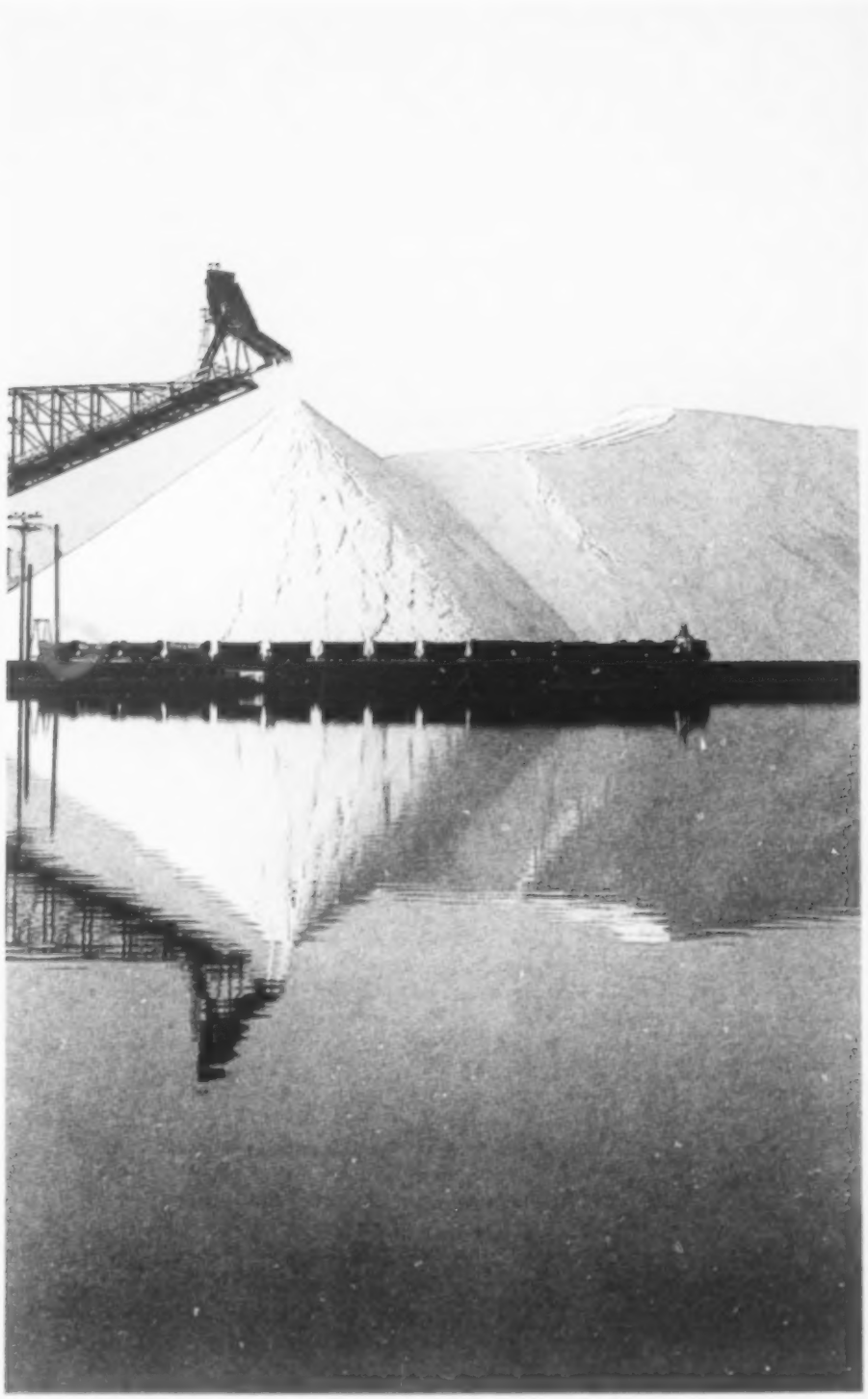


cational and child care programs. We encourage employee volunteerism with civic, charitable and non-profit organizations. We are proud of our employees who donate their time and energy. *Leslie employs 350 people full time in California, with an additional 150 added each year at harvest time. Many of our harvest employees have been with us for years, some for several decades. Many of our employees are represented by Operating Engineers Local 3, International Association of Machinists #284 and Teamsters, Local 78.* *We manage according to an established philosophy, which governs both internal and external relationships.*

EMPLOYEES

Our objective is to optimize long term return on investment by providing the best combination of low product cost with high quality product and service levels equal to or better than the competition. *Safe employment conditions and acts take priority over production or profit.* *We believe in a disciplined approach to management. This involves planning, identifying and quantifying opportunities, establishing priorities, setting goals, defining responsibilities, monitoring results and initiating change when the situation dictates.* *Decentralization is favored unless centralization is clearly superior. Decisions should be made at the lowest possible organizational level consistent with authority. Appropriate employees should be given the opportunity to voice opinions prior to decisions being made. Ideas, suggestions and recommendations are expected from all employees. Opinions are welcome and should be stated candidly and should be quantified and substantiated in order to permit objective evaluations. Employees stating such opinions are entitled to honest responses. Decisions once*

MANAGEMENT PHILOSOPHY



reached should be actively supported. *Communication should be as open and candid as confidentiality permits. Decisions, objectives, directions and policies must be clearly communicated to those who have a reasonable need to know. Employees are expected to keep their supervisors informed as to results and events which have a reasonable likelihood of affecting such decisions, objectives, directions and policies. Reporting levels within the organization should be kept to a minimum, and should not impede direct employee to employee communications.* *We encourage all employees to be open-minded, innovative, self-starting and to use their initiative. Employees should be allowed to take calculated risks when programs or activities have financial implications. We recognize appropriate resources must be made available with which to accomplish the objectives and tasks assigned.* *Employees are expected to be supportive of one another to achieve agreed upon objectives. Cooperation and teamwork are essential.* *Conflicts between employees which adversely affect job performance must be openly confronted and constructively resolved. If such conflicts cannot be resolved between the employees themselves, it shall be the responsibility of the immediate supervisors to resolve the conflicts without delay.* *Career planning is encouraged through constructive performance appraisals and training. Promotion from within will be exercised consistent with the ability of employees, needs of the company and promotional opportunities. Above average performance will be rewarded and corrective action taken for sub-par performance. We shall strive to provide stable employment. Employees will be given the opportunity to progress within the company to the extent their talents permit.*

LESLIE SALT COMPANY
BAY AREA
OPERATIONS

Napa Facility

"Sunday, December 27, 1834... *We passed directly under the high cliff on which the presidio is built, and stood into the middle of the Bay, from whence we could see small bays making up into the interior, large and beautifully wooded islands and the mouths of several small rivers. If California ever becomes a prosperous country, this Bay will be the centre of its prosperity. The abundance of wood and water; the extreme fertility of its shores; the excellence of its climate, which is as near to being perfect as any in the world; and its facilities for navigation, affording the best anchoring-grounds in the whole western coast of America—all fit it for a place of great importance.*"

Two Years Before the Mast
Richard Henry Dana

Newark Facility

Redwood City Facility

Vallejo
San Pablo Bay
San Francisco Bay
Fremont
San Jose

TESTIMONY OF
JOHN K. VAN DE KAMP
ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

Before the United States House of Representatives
Merchant Marine and Fisheries Committtee
Subcommittee on Fisheries and
Wildlife Conservation and the Environment

Concerning H.R. 4272, Legislation Expanding the
San Francisco Bay National Wildlife Refuge

September 8, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to testify on behalf of the people of the State of California regarding the expansion of the San Francisco Bay National Wildlife Refuge. As California's Attorney General, I have independent authority to represent the public interest, and along with other State agencies, I have the legal responsbility to protect the natural resources of the state from pollution, impairment or destruction. Today, I am submitting testimony in support of H.R. 4272, legislation introduced by Congressman Edwards which authorizes enlarging the San Francisco Bay National Wildlife Refuge by approximately 21,000 acres.

San Francisco Bay has always been of enormous importance to millions of birds who migrate each year along the Pacific Coast. Biologists believe that the Bay's wetlands are one of three or four "critical staging areas" along the Pacific Flyway, sites to which wildlife unerringly return to on their journeys in order to rest and feed. Without these staging areas, the migration of waterfowl would be irreparably disrupted.

Unfortunately, as we all know, wetlands in San Francisco Bay (and throughout California) have disappeared at a dramatic rate over the past century, so that now only a small fraction, 15 to 25 per cent, of the Bay's historic wetlands remain. (Statewide, it is estimated that 90 to 95 per cent of

California's historic wetlands have been destroyed.) To help compensate for some of these losses, the San Francisco Bay National Wildlife Refuge was established in 1972, also through the efforts of Congressman Edwards. The refuge was originally authorized to include close to 22,000 acres of wetlands and related habitat. It presently encompasses 18,000 acres in South San Francisco Bay, and I am pleased to note that Congress recently appropriated the monies necessary to further expand the refuge to its original boundaries.

The refuge has assumed an important role in the ecosystem of the Bay. It currently used by vast numbers of migratory waterfowl, including over one million shorebirds. This latter figure represents seventy percent of all shorebirds which migrate along the Pacific Flyway. The refuge is also home to several endangered or threatened species, and attracts nearly one million human visitors each year.

The need to set aside additional wetlands as protected wildlife habitat remains critical, however. Even since the mid-1970's, when strict regulatory controls over wetlands development were put in place, thousands of acres in the Bay Area have been filled, either illegally or with government authorization. Moreover, the pressure on existing wetlands, particularly in the South Bay, is intense. Development proposals have been advanced for virtually every remaining wetland parcel in the South Bay. A

1986 study by the U.S. Army Corps of Engineers (the "Shoreline Study") predicted that most if not all of the South Bay wetlands would eventually be lost to development. Unless compensated for, the disappearance of these wetlands is certain to result in substantial declines in the populations of shorebirds and waterfowl.

Moreover, biologists have only recently fully recognized the vital role that seasonal wetlands play in the life cycle of shorebirds and waterfowl. Shorebirds in particular need to feed almost constantly to replenish the resources they expend during migration, when they can lose up to 50% of their body weight. Seasonal wetlands provide the necessary feeding and resting habitat for shorebirds when daily high tides or other conditions make it is impossible for them to use other feeding areas, such as tidal wetlands. Seasonal wetlands in San Francisco Bay have experienced large historic losses and are currently threatened by severe development pressure, but virtually no seasonal wetlands were included within the original boundaries of the refuge.

H.R. 4272 would basically double the size of the existing refuge by authorizing the acquistion of an additional 20,850 acres of wetlands, open waters in San Francisco Bay, and a few upland buffer areas. Importantly, approximately 7000 of the acres are seasonal wetlands. It is my understanding that the

areas included have been designated by the U.S. Fish and Wildlife Service (FWS) as the most important wetlands sites in South San Francisco Bay outside the existing refuge boundaries.

As currently drafted, the legislation contains a "willing seller" clause, meaning that the FWS will only be able to purchase property from willing sellers at fair market value. I believe that this provision should remain part of the statute, to make clear that FWS will be adding to the refuge on the basis of voluntary transactions. The "map" of the new refuge contained in the legislation effects no taking of any property rights or interests, and is far less intrusive that many land management statutes which immediately appropriate land for inclusion in national parks or wilderness areas and struggle with questions of compensation for property owners only later on. In essence, the map represents a description of areas with excellent habitat value, a "wish list" of wildlife experts for future acquisitions.

Although the bill enjoys widespread support in the Bay Area and elsewhere in California, it has engendered some opposition from cities in the South Bay. These communities are frightened that the measure will limit development on sites encompassed within the newly authorized boundaries of the refuge.

However, nothing in the legislation prevents viable development from occurring, provided that all the requisite government approvals can be obtained. For wetland sites, this

will require, among other things, that applicants seeking to engage in non-water dependent activities rebut the presumption that there are no alternative sites for development. For the small number of upland areas affected by H.R. 4272, areas subject to less stringent regulatory protections, development may very well go forward, notwithstanding this bill. In short, outlining the boundaries of the new refuge will not halt otherwise feasible development possibilities.

In the brief span of fifteen years, the San Francisco Bay Refuge has become a critical habitat for millions of migratory shorebirds and waterfowl. Expansion of the refuge as envisioned in H.R. 4272 is now imperative, due to the continuing disappearance of wetlands, particularly seasonal wetlands, in the south and central Bay, and the intense development pressure on remaining wetland areas.

San Francisco Bay is a unique natural resource, and a source of pride to the people of California. As the population of the Bay Area, particularly the South Bay, has mushroomed over the past two decades, threats to the Bay's health have multiplied. This legislation will be of incalculable benefit to the wildlife and people who seek refuge in the Bay and its wonders, and I hope that Congress promptly acts to approve it.

Thank you again for the opportunity to submit this testimony.